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4 NEW JERSEY TASK FORCE  
5 ON THE ECONOMIC DEVELOPMENT  
6 AUTHORITY'S TAX INCENTIVES  
7  
8

9 PUBLIC HEARING  
10 Trenton, New York  
11 March 28, 2019  
12

13 B E F O R E :

14 PROFESSOR RONALD CHEN  
15 JIM WALDEN, ESQ.  
16 MILT WILLIAMS, ESQ.  
17 GEORGIA WINSTON, ESQ.  
18 AVNI PATEL, ESQ.  
19 PABLO QUIÑONES, ESQ.  
20

21 Reported by:

22 MARY F. BOWMAN, RPR, CRR

23 JOB NO. 158413  
24  
25

<p style="text-align: right;">Page 2</p> <p>1 2 3 4 5 March 28, 2019 6 10:00 a.m. 7 8 9 Public Hearing, held at the War 10 Memorial, Trenton, New Jersey, before Mary 11 F. Bowman, a Registered Professional 12 Reporter, Certified Realtime Reporter, and 13 Notary Public of the State of New Jersey. 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 3</p> <p>1 Proceedings - Opening Statement 2 MR. CHEN: Good morning, 3 everyone. My name is Ronald Chen. I'm 4 a law professor at Rutgers Law School. 5 I want to welcome you all to the first 6 public hearing held by the New Jersey 7 Task Force on the Economic Development 8 Authority's Tax Incentives and also 9 welcome to the many people who are 10 watching this through live streaming 11 across the state. 12 On January 24, 2019, Governor 13 Philip Murphy issued Executive Order 52 14 which established this task force. I 15 have been honored to have been 16 appointed to lead the task force and 17 carry out its mission, conduct an 18 in-depth examination of the design, 19 implementation and oversight of two tax 20 incentive programs. 21 Before I explain our mission and 22 goals, let me introduce the members of 23 my team. I am assisted in this task by 24 my special counsel, law firm of Walden 25 Macht &amp; Haran, a law firm with deep</p>
<p style="text-align: right;">Page 4</p> <p>1 Proceedings - Opening Statement 2 experience in conducting 3 investigations. Jim Walden, to my 4 left, your right, is leading the team 5 and is being assisted by Georgia 6 Winston, by Milt Williams and Avni 7 Patel. We also have Pablo Quinones of 8 Quinones Law, a firm with expertise in 9 fraud investigations and corporate 10 compliance matters. 11 Let me now explain why we are 12 here. In 2013, the legislature enacted 13 the New Jersey Economic Development 14 Opportunity Act, which dramatically 15 increased the state's tax incentive 16 programs designed to encourage 17 businesses to engage in economic 18 development, job creation and the 19 preservation of existing jobs within 20 New Jersey. 21 Two existing programs in 22 particular were given significant new 23 resources by that legislation, the Grow 24 New Jersey program and the Economic 25 Redevelopment and Growth program which</p>	<p style="text-align: right;">Page 5</p> <p>1 Proceedings - Opening Statement 2 we usually refer to by its acronym 3 E-R-G, or ERG. 4 In very simple terms, the 5 programs can help a company reduce its 6 corporate taxes if it, A, moves jobs to 7 New Jersey; B, cancels its plans to 8 move jobs out of New Jersey; or C, 9 makes capital investments in certain 10 areas of New Jersey known as Garden 11 State Growth Zones. The Garden State 12 Growth Zone is defined in the 13 legislation as the four New Jersey 14 cities with the lowest median family 15 income based on figures from the U.S. 16 Census, which right now are the cities 17 of Camden, Trenton, Passaic and 18 Patterson. 19 If a company's yearly tax 20 liabilities are less than their tax 21 incentive award, they actually get a 22 check from the Treasury. So tax 23 exemption is very much like money. And 24 the legislation even allows a company 25 to sell its tax exemption award to</p>

<p style="text-align: right;">Page 6</p> <p>1 Proceedings - Opening Statement 2 another company at a slight discount. 3 The state agency that oversees 4 these programs is called the Economic 5 Development Authority. For shorthand, 6 I will call this the EDA, as we are 7 speaking. As you can imagine, it is a 8 very important gatekeeper and in some 9 ways it acts like the police department 10 over the tax incentive programs. 11 Now, let me make this clear at 12 the outset. Most of the companies that 13 apply for these tax breaks, I assume, 14 do so honestly and at least believe 15 that they are eligible for them. But 16 that does not mean that we can or 17 should just trust them without 18 verifying the information they give us. 19 After all, in just three weeks we are 20 all going to file tax returns. Most 21 taxpayers are honest, but we know that 22 the IRS doesn't just take our word for 23 it. 24 So I doubt it will surprise you 25 to learn that there are some companies</p>	<p style="text-align: right;">Page 7</p> <p>1 Proceedings - Opening Statement 2 who might apply for tax breaks even 3 though they don't actually deserve 4 them. So, for example, a company might 5 say, we planned to move jobs out of the 6 state when they really had no such 7 plans. Maybe a company says, we will 8 create 100 jobs when they had no plan 9 to do so or do not have enough business 10 to sustain those jobs. Or maybe a 11 company fully intended to create and 12 sustain those jobs, but the business 13 takes a downturn and they have to let 14 people go. 15 In these and many other 16 situations, someone from the government 17 has to step in and say, hold on, you 18 don't get to keep those tax breaks. 19 That's where the EDA comes in. 20 They are supposed to have the right 21 people, policies and procedures to be 22 able to, one, receive and understand 23 some pretty complicated data and 24 information about whether the company 25 qualifies under the programs</p>
<p style="text-align: right;">Page 8</p> <p>1 Proceedings - Opening Statement 2 requirements; 2, make sense of it; 3, 3 verify or challenge the data; and then, 4 4, decide whether each company deserves 5 or gets to keep the tax breaks. 6 While we are talking about big, 7 big numbers, and tax breaks that will 8 continue for 20 years. In fact, the 9 New Jersey comptroller said in his 10 audit and I quote, "The EDA has 11 approved nearly 11 billion dollars in 12 tax credit incentives," under the 13 various tax incentive programs. 14 So a lot is riding on the EDA 15 getting it right and doing its job 16 well. 17 So what is the problem? Some 18 serious problems have emerged that 19 suggest the EDA may not have the right 20 policies and procedures to serve as an 21 effective gatekeeper. These problems 22 suggest that the legislation itself did 23 not include enough controls to ensure 24 that the EDA would monitor effectively 25 so that companies could not take</p>	<p style="text-align: right;">Page 9</p> <p>1 Proceedings - Opening Statement 2 advantage of the process by getting tax 3 incentives that they did not deserve. 4 The problem was first exposed by 5 the office of the state auditor in 6 January 2017. He audited the EDA's 7 work from July through September of 8 2016 and found serious problems with 9 the EDA's work as a gatekeeper over the 10 Grow New Jersey program. 11 The EDA's response was to submit 12 a corrective action plan intended to 13 plug the holes in its oversight, but 14 after problems continued to emerge, 15 Governor Murphy signed Executive Order 16 Number 3 -- as the number suggests, it 17 was quite early in his term -- 18 requiring the comptroller to perform 19 another more comprehensive audit. 20 Not only did the comptroller find 21 more problems. He found that the EDA 22 had never corrected some of the serious 23 problems first identified by the state 24 auditor despite its corrective action 25 plan.</p>

<p style="text-align: right;">Page 10</p> <p>1 Proceedings - Opening Statement</p> <p>2 Now, let me also be very clear on</p> <p>3 this. I'm quite sure, I know there are</p> <p>4 talented people at the EDA, but even</p> <p>5 the best people can't perform such</p> <p>6 complicated work effectively if they</p> <p>7 have an insufficient number of people,</p> <p>8 insufficient training or lack policies</p> <p>9 and procedures to verify the</p> <p>10 information provided by these</p> <p>11 companies. If the EDA simply relies on</p> <p>12 all the information provided by the</p> <p>13 corporate applicants without any</p> <p>14 effective verification, then you have a</p> <p>15 situation that is ripe for abuse.</p> <p>16 So today in the first day of our</p> <p>17 multiday proceeding. We will hear from</p> <p>18 the comptroller, who will break it down</p> <p>19 for us, what went wrong and why it</p> <p>20 matters. This will help us try to</p> <p>21 figure out why it happened and, more</p> <p>22 importantly, what the legislature can</p> <p>23 do to fix it in future tax incentive</p> <p>24 bills.</p> <p>25 So that is why we are here. We</p>	<p style="text-align: right;">Page 11</p> <p>1 Proceedings - Opening Statement</p> <p>2 will continue to explore other subjects</p> <p>3 in subsequent days of this proceeding,</p> <p>4 including the process for drafting the</p> <p>5 bill and who had a role in that,</p> <p>6 whether anyone put pressure on the EDA</p> <p>7 to approve companies that never</p> <p>8 deserved the credits in the first place</p> <p>9 and, if so, why.</p> <p>10 Before we get to today's</p> <p>11 proceeding, I want to take this</p> <p>12 opportunity to report on what the task</p> <p>13 force's efforts have been to date.</p> <p>14 When we started out our work, the</p> <p>15 first thing we needed to do was to make</p> <p>16 sure that no one destroyed any</p> <p>17 documents as we were gearing up.</p> <p>18 Hopefully, no one would, but hope isn't</p> <p>19 a strategy, so we wanted to make sure.</p> <p>20 So we sent letters to every</p> <p>21 single company that actually took tax</p> <p>22 credits. The letters told them</p> <p>23 essentially, don't get rid of anything</p> <p>24 or there will be problems. Almost 100</p> <p>25 of those letters went out in early</p>
<p style="text-align: right;">Page 12</p> <p>1 Proceedings - Opening Statement</p> <p>2 February.</p> <p>3 Now, we also knew that many of</p> <p>4 these companies had people working for</p> <p>5 them when they were applying for these</p> <p>6 tax credits. Some had lawyers, some</p> <p>7 had consultants, some even hired</p> <p>8 lobbyists. We knew they also had</p> <p>9 relevant documents, so we sent document</p> <p>10 preservation letters to about 20 of</p> <p>11 those firms.</p> <p>12 Then we started a process of</p> <p>13 collecting the documents and</p> <p>14 interviewing people, including the few</p> <p>15 at EDA, to better understand at a</p> <p>16 granular level its process of</p> <p>17 application, review, certification, and</p> <p>18 oversight for both tax credit programs.</p> <p>19 We are now reviewing the documents to</p> <p>20 understand each specific case.</p> <p>21 Now, we have only been going for</p> <p>22 about eight weeks, but I think we have</p> <p>23 gotten a lot done. We have met at</p> <p>24 length with the comptroller,</p> <p>25 Mr. Degnan, to discuss more fully his</p>	<p style="text-align: right;">Page 13</p> <p>1 Proceedings - Opening Statement</p> <p>2 office's audit and we thank him -- he</p> <p>3 will be here this morning. We thank</p> <p>4 him for his appearance today, during</p> <p>5 which we will ask questions about</p> <p>6 several of his important findings. We</p> <p>7 think it is critically important for</p> <p>8 the public to understand the scope and</p> <p>9 importance of his findings.</p> <p>10 In addition, we have met with a</p> <p>11 few policy experts and analysts who</p> <p>12 have studied the efficiency and</p> <p>13 effectiveness of the state's tax credit</p> <p>14 programs. With the benefit of their</p> <p>15 experience and wisdom, we hope to make</p> <p>16 some specific recommendations on future</p> <p>17 tax incentive legislation before the</p> <p>18 current legislation expires.</p> <p>19 I want to explain a few</p> <p>20 additional details about our work. As</p> <p>21 I said before, we enter this project</p> <p>22 without any preconceived notions that</p> <p>23 program beneficiaries have been</p> <p>24 misusing the tax incentives. Rather,</p> <p>25 it is our hope that program</p>

<p style="text-align: right;">Page 14</p> <p>1 Proceedings - Opening Statement</p> <p>2 beneficiaries are in compliance with</p> <p>3 the program requirements.</p> <p>4 At this stage, the next step in</p> <p>5 our investigation would be to issue</p> <p>6 comprehensive document production</p> <p>7 demands to the roughly 100 program</p> <p>8 beneficiaries that received Grow or ERG</p> <p>9 grants. Those productions might be</p> <p>10 burdensome.</p> <p>11 For that reason, for program</p> <p>12 beneficiaries that believe they applied</p> <p>13 in good faith and have been compliant,</p> <p>14 we are announcing today that we will</p> <p>15 offer an opportunity to participate in</p> <p>16 an Accelerated Recertification Program,</p> <p>17 which I will refer to as the ARP.</p> <p>18 Let me be clear that the ARP is</p> <p>19 task force program. It is not intended</p> <p>20 to take the place of EDA's annual</p> <p>21 certification process which is</p> <p>22 happening right now. It does not bind</p> <p>23 in any way the Attorney General in any</p> <p>24 investigations that he may undertake.</p> <p>25 But it will allow those companies</p>	<p style="text-align: right;">Page 15</p> <p>1 Proceedings - Opening Statement</p> <p>2 who believe they are in compliance an</p> <p>3 opportunity to establish that quickly,</p> <p>4 and it will allow us to focus our</p> <p>5 energies and resources to the more</p> <p>6 problematic situations.</p> <p>7 The ARP will require the</p> <p>8 preparation of a detailed affidavit</p> <p>9 covering a number of issues, together</p> <p>10 with the submission of documents that</p> <p>11 go well beyond those required by the</p> <p>12 EDA's annual certification process.</p> <p>13 We are not going to take the</p> <p>14 companies' word at face value.</p> <p>15 Companies will have to provide back-up</p> <p>16 data on every important aspect of the</p> <p>17 requirements. To further verify</p> <p>18 submitted information, we may need to</p> <p>19 interview corporate employees during</p> <p>20 this process. We may interview their</p> <p>21 lobbyists and lawyers. Also, we are</p> <p>22 going to work in cooperation with other</p> <p>23 state agencies, including the</p> <p>24 Department of Labor, to verify or</p> <p>25 challenge the information.</p>
<p style="text-align: right;">Page 16</p> <p>1 Proceedings - Opening Statement</p> <p>2 For companies that want to</p> <p>3 participate in the ARP -- and we</p> <p>4 already have requests from over 50</p> <p>5 companies to participate, we already</p> <p>6 have required them to submit detailed</p> <p>7 affidavits under penalty of perjury to,</p> <p>8 A, describe the steps that they</p> <p>9 undertook to make sure that all of</p> <p>10 their documents are preserved, to</p> <p>11 commit that, if necessary.</p> <p>12 If they fail to recertify through</p> <p>13 our rigorous process, they will</p> <p>14 voluntarily comply with document</p> <p>15 production requests without the need</p> <p>16 for us to issue subpoenas. In this</p> <p>17 way, the public should know we will</p> <p>18 hold any company to account if they do</p> <p>19 not preserve and produce all documents</p> <p>20 relevant to our inquiry.</p> <p>21 That said, we greatly appreciate</p> <p>22 the cooperation we are getting from the</p> <p>23 EDA, the comptroller, and program</p> <p>24 beneficiaries. Most companies readily</p> <p>25 agreed to cooperate with our</p>	<p style="text-align: right;">Page 17</p> <p>1 Proceedings - Opening Statement</p> <p>2 investigation. Indeed, one company</p> <p>3 went so far as to disclose to us, on</p> <p>4 our very first call to them, that they</p> <p>5 were not in compliance with the program</p> <p>6 requirements. And, in fact, they have</p> <p>7 agreed in principle to repay the tax</p> <p>8 credits they received and further to</p> <p>9 the termination of their award which</p> <p>10 amounted to almost 1.5 million dollars.</p> <p>11 So we have already begun the</p> <p>12 process of recovering money for New</p> <p>13 Jersey's Treasury.</p> <p>14 We hope that any other</p> <p>15 noncompliant companies will follow this</p> <p>16 example. If we must flesh them out</p> <p>17 through our investigation, the results</p> <p>18 could be far worse for noncompliant</p> <p>19 companies.</p> <p>20 Unfortunately, not everyone has</p> <p>21 promised cooperation. For that reason,</p> <p>22 the governor, under his power granted</p> <p>23 by the New Jersey Constitution and by</p> <p>24 state statute, has delegated direct</p> <p>25 authority to me to issue subpoenas.</p>

<p style="text-align: right;">Page 18</p> <p>1 Proceedings - Opening Statement  2 Obviously, noncooperative program  3 beneficiaries may be taking this  4 posture for a variety of reasons,  5 including that they have something to  6 hide. Rest assured, we will  7 investigate thoroughly, and if any  8 applied for tax incentive benefits  9 based on false or misleading  10 information or if they are out of  11 compliance, we will seek repayment or  12 refer program beneficiaries to the  13 Attorney General or the U.S. Attorney  14 as appropriate.  15 With that introduction, I would  16 like to call on Jim Walden to describe  17 the testimony we plan to elicit at  18 today's proceedings. For those who  19 don't know Jim, he was a federal  20 prosecutor for almost nine years. For  21 the past 18 years, he has been in  22 private practice conducting internal  23 corporate investigations. He is also  24 deeply involved in litigation to help  25 improve the functioning and</p>	<p style="text-align: right;">Page 19</p> <p>1 Proceedings - Opening Statement  2 accountability of our government across  3 a range of issues. Jim.  4 MR. WALDEN: Thank you, Professor  5 Chen. Thank you for your leadership.  6 It has been great working together in  7 these past eight weeks.  8 If I can take a minute to  9 introduce more fully the members of the  10 team, I think you will have confidence  11 that this is a team that has  12 significant fraud experience, antifraud  13 experience in investigating  14 corporations.  15 Milt Williams, former federal  16 prosecutor and former state prosecutor,  17 with significant fraud experience while  18 at the government. He then served as  19 the deputy general counsel for Time  20 Life, a very significant position,  21 where he oversaw several fraud  22 investigations. And then finally he  23 has been in private practice. In  24 addition, Milt has the distinction of  25 being the former cochair of New York's</p>
<p style="text-align: right;">Page 20</p> <p>1 Proceedings - Opening Statement  2 Moreland Commission, which was a  3 commission established to investigate  4 political corruption.  5 Next to me is Georgia Winston.  6 Georgia Winston has been a litigator  7 for more than 15 years and conducted  8 many significant internal  9 investigations, including fraud  10 investigations.  11 To Professor Chen's right, to  12 your left, is Avni Patel, a former  13 state prosecutor who is a senior lawyer  14 at my firm.  15 And to her right, your left, is  16 Pablo Quinones who was a long-time  17 prosecutor in the Southern District of  18 New York until he ascended to the  19 position of deputy chief of the fraud  20 section at main Justice.  21 So we are very pleased to be  22 here. And there are two things that I  23 want to say before I tell you about the  24 lineup today.  25 Number one is that it is</p>	<p style="text-align: right;">Page 21</p> <p>1 Proceedings - Opening Statement  2 extremely important to this body that  3 whistleblowers come forward.  4 Whistleblowers have a lot of burden on  5 their shoulders, and they are  6 extraordinarily important to  7 investigations, and we welcome them,  8 and I welcome them to call me directly.  9 So my telephone number is 212-335-2031,  10 and anyone that can help us in our  11 mission, we are glad to receive  12 information as long as it is reliable.  13 Secondly, you are going to see  14 that, at least for the initial hearings  15 that we are holding, that due process  16 of all the individuals and companies is  17 of critical importance to this task  18 force.  19 This is a peculiar task force in  20 one way. Part of our mission is that  21 we have to conduct some of our fact  22 finding in public. And we are at the  23 very beginning stages of that  24 investigation, although we have  25 obviously made a significant amount of</p>

<p style="text-align: right;">Page 22</p> <p>1 Proceedings - Opening Statement  2 progress in the eight weeks that we  3 have been a task force.  4 So there may be aspects to  5 today's presentation and maybe the next  6 hearing, because this is day one of a  7 multiday proceeding, that are  8 frustrating to you because we do not  9 want to go into names of people and  10 individuals -- and companies, and that  11 is because we believe that it is  12 important to get the information out  13 there in a way that does the least  14 amount of damage to people that are not  15 here to defend themselves, and then we  16 understand that it is our solemn  17 obligation to investigate that  18 thoroughly and then make a decision.  19 At that stage, if we corroborate  20 information, we have a choice. And the  21 choice is to call the companies or  22 people to public hearings and confront  23 them with the evidence. Or if the  24 evidence is conclusive in our view,  25 then Professor Chen has the discretion</p>	<p style="text-align: right;">Page 23</p> <p>1 Proceedings - Opening Statement  2 to make a referral to either the  3 Attorney General's office or the U.S.  4 Attorney's office as appropriate.  5 So for that reason, as we are  6 having individuals testify, and really  7 today it is really only relevant to two  8 of the witnesses, we are going to ask  9 them to testify without mentioning  10 names and companies that are involved  11 in alleged wrongdoing.  12 Now, let me turn to the lineup.  13 You will first hear from a woman  14 named Gulsen Kama, who alleged that her  15 former company was involved in an  16 effort to defraud the tax incentive  17 program. After Ms. Kama filed a court  18 case, it's our understanding that  19 her -- after some period of litigation,  20 her former employer settled the case  21 and put her under the obligation of a  22 nondisparagement agreement.  23 So that is an additional reason,  24 because we do not want to complicate  25 things for Ms. Kama, that we will ask</p>
<p style="text-align: right;">Page 24</p> <p>1 Proceedings - Opening Statement  2 her not to name her former employer or  3 the colleagues that she worked with at  4 that company.  5 Next you're going to hear from  6 the esteemed comptroller from state of  7 New Jersey, Philip Degnan. He's going  8 to testify about the audit, and we are  9 going to try to unpack it and simplify  10 it in a way that I hope is helpful to  11 the public and that I think was not  12 really a focus of the legislative  13 hearing that occurred in February, we  14 certainly hope that's helpful. But we  15 also intend to identify and highlight  16 some information that maybe should have  17 been put before the comptroller during  18 his audit but was not.  19 We will not draw conclusions  20 about why it was not put there, and I  21 want to emphasize that there may be  22 completely explainable reasons. But we  23 think this is an important issue and  24 the public has a right to know.  25 After the comptroller, I will</p>	<p style="text-align: right;">Page 25</p> <p>1 Proceedings - Opening Statement  2 make a short presentation on a couple  3 of points that are related to the  4 comptroller's testimony, and then you  5 will hear from Josh Goodman, of the Pew  6 Charitable Trusts, which a public  7 charity that provides nonpartisan  8 research and technical assistance to  9 policymakers across a range of issues,  10 but including on tax incentives. And  11 Josh is a senior officer of economic  12 development at Pew. He will testify  13 about national best practices and a  14 design, implementation and oversight of  15 tax incentive programs and ways in  16 which New Jersey could improve both the  17 way it monitors and in future  18 legislation.  19 And then finally, you will hear  20 from a man named Jon Whiten, who was  21 formerly at the New Jersey -- formerly  22 of New Jersey Policy Perspective where  23 he worked for almost seven years, and  24 we will hear his perspective on New  25 Jersey's tax incentive program,</p>

1 G. Kama  
2 including the disconnect between the  
3 initial legislation and the bills that  
4 ultimately came and the lack of true  
5 oversight over EDA. He will also cover  
6 ways in which future legislation can  
7 improve the situation.

8 So without further adieu, could I  
9 please call on Gulsen Kama and her  
10 attorneys to take the seats at center  
11 stage.

12 I think they're in the hallway.  
13 My colleague, Mr. Williams, will go get  
14 them.

15 MR. CHEN: Ms. Kama, can you rise  
16 and raise your right hand. Do you  
17 solemnly swear or affirm that your  
18 testimony you're about to give is the  
19 truth, whole truth and nothing but the  
20 truth?

21 THE WITNESS: I do.

22 EXAMINATION BY

23 BY MR. WILLIAMS:

24 Q. Good morning, Ms. Kama. Thank  
25 you for joining us today.

1 G. Kama  
2 You're accompanied by your  
3 attorneys, is that correct?

4 A. Correct.

5 Q. That's Mr. Richard Meisner and  
6 Mr. Scott Salmon, correct?

7 A. Correct.

8 Q. You are here today as a result of  
9 the task force issuing a subpoena, is that  
10 correct?

11 A. Correct.

12 Q. And could you please state your  
13 full name for the record.

14 A. Gulsen Kama.

15 Q. And how do you spell the first  
16 name?

17 A. G-U-L-S-E-N.

18 Q. As you have heard today, a  
19 significant part of our in-depth  
20 examination of the EDA tax incentive  
21 programs is to focus on the company level  
22 and assess whether companies were compliant  
23 and truthful in their applications and  
24 certifications to receive EDA tax credits.  
25 In this way by understanding the potential

1 G. Kama  
2 means companies used to evade detection of  
3 potential fraud, we can help the EDA to  
4 improve its monitoring and make helpful  
5 suggestions for legislative requirements  
6 for future tax incentive bills.

7 We are aware in April of 2016,  
8 you filed a whistleblower complaint or qui  
9 tam action in New Jersey Superior Court  
10 against your former employer, and we want  
11 to speak to you about your experience at  
12 the company and about your specific  
13 allegations in the complaint.

14 We are obviously not here -- this  
15 is not a trial. We are obviously not here  
16 to draw any conclusions or inferences. We  
17 just want to find out what you know, what  
18 you observed and your experience. And we  
19 ask in that context that you refrain from  
20 mentioning the name of your employer,  
21 anyone you worked with. The name of any  
22 substance, we will refer to them as company  
23 or individual or by their title, OK?

24 A. OK.

25 Q. And obviously you have been

1 G. Kama  
2 advised of your right to counsel to be here  
3 and they are here with you.

4 Is it true that I met you about  
5 two days ago for the first time?

6 A. Yes.

7 Q. Have we discussed in general the  
8 allegations in your complaint?

9 A. Yes.

10 Q. Have you also been advised that  
11 the EDA may ask to cross-examine you at  
12 some point?

13 A. Yes.

14 Q. And obviously you are here to  
15 tell the truth?

16 A. Nothing but the truth.

17 Q. Now, let me ask you some  
18 questions about your background in terms of  
19 your work experience. And again, don't  
20 mention any company you worked for, just  
21 generally describe what they -- what they  
22 were, what they did.

23 What's your educational  
24 background?

25 A. I have a bachelor of science



1 G. Kama  
2 degree in industrial engineering from the  
3 Bogizici University in Istanbul, Turkey,  
4 and I have a master's of business  
5 administration from the University of  
6 Georgia in Athens, Georgia.  
7 Q. And are you currently employed?  
8 A. I am.  
9 Q. What is your position?  
10 A. I am a finance executive.  
11 Q. Are you the CFO at your current  
12 company?  
13 A. I am the regional CFO at my  
14 company.  
15 Q. You've generally been in the  
16 financial business for about 22 years?  
17 A. Correct.  
18 Q. When did this start? Did this  
19 start about 1996?  
20 A. That's correct.  
21 Q. Without naming the company, did  
22 you work for an analyst for an  
23 international shipping company?  
24 A. Logistics company, yes.  
25 Q. How long did you work there?

1 G. Kama  
2 A. About two years.  
3 Q. And then what was your next  
4 position?  
5 A. I worked for a major airline.  
6 Q. And for how long?  
7 A. Almost 13 or 14 years.  
8 Q. What was your position there?  
9 A. I had several positions, mostly  
10 in the finance department, as a strategic  
11 finance professional advising C level  
12 executives.  
13 Q. And is it fair to say at your  
14 last position, you left that company in  
15 2011?  
16 A. Correct.  
17 Q. What was your title at the time  
18 that you left?  
19 A. I was the managing director of  
20 corporate and government affairs.  
21 Q. Where did you go in 2011? Where  
22 were you employed?  
23 A. I moved to New Jersey in 2011.  
24 Q. What type of company did you work  
25 for?

1 G. Kama  
2 A. It's a retail -- it was a retail  
3 company that I came to New Jersey to work  
4 for.  
5 Q. How long did you work there for?  
6 A. About two years -- a year and a  
7 half.  
8 Q. And what was your role there?  
9 A. I actually was the vice president  
10 of strategy.  
11 Q. From 2013 to 2014, you had  
12 another position?  
13 A. Correct.  
14 Q. Where was that? What type of  
15 company? Sorry.  
16 A. It was an insurance company.  
17 Q. And what was your title or role  
18 there?  
19 A. I was the corporate director of  
20 financial planning and analysis.  
21 Q. From there, where did you go?  
22 That was -- in 2013, 2014, you were the  
23 director of corporate financial planning  
24 and analysis, correct?  
25 A. Correct.

1 G. Kama  
2 Q. Then in 2015, you held the  
3 position as the VP of financial planning  
4 and analysis at a professional services  
5 company, correct?  
6 A. Correct.  
7 Q. And what were your duties and  
8 responsibilities there?  
9 A. I was there to financially advise  
10 the CEO on any business matters that came  
11 up.  
12 Q. And when you say CEO, you mean  
13 the chief executive officer?  
14 A. Correct.  
15 Q. That's the head of the company?  
16 A. Correct.  
17 Q. And you held that position from  
18 about 2015 to 2016?  
19 A. Correct.  
20 Q. And then you currently are the  
21 regional CFO at a publicly traded  
22 healthcare company, correct?  
23 A. Yes.  
24 Q. What do you do there?  
25 A. I manage the financials for a

1 G. Kama

2 large business unit.

3 Q. So you have generally worked in  
4 the area of finance and planning since  
5 graduating from business school, correct?

6 A. Correct.

7 Q. And just could you tell me in  
8 general what does that entail?

9 A. It entails looking at the  
10 business decisions and arming the  
11 executives making those critical business  
12 decisions with the relevant, correct  
13 information.

14 Q. And in the various roles that you  
15 have held over the years, you've more or  
16 less worked with C-Suite level executives,  
17 correct?

18 A. Correct.

19 Q. Consistently, correct?

20 A. Consistently.

21 Q. I'm going to hand you what I  
22 guess we can label as Task Force Exhibit 1.  
23 And I just ask you to look at it. I have  
24 given you that. It is highlighted.

25 Rich, let me know when I can go

1 G. Kama

2 ahead after you take a look.

3 So I would like to ask you a few  
4 questions in what I handed you. Without  
5 stating any names in it, what is that?

6 A. This is the complaint I filed  
7 against my former company.

8 Q. And is this the company -- let me  
9 just get this exactly -- that you worked at  
10 between 2015/2016, as a VP of financial  
11 planning and analysis?

12 A. Correct.

13 Q. And this was the professional  
14 services company?

15 A. Correct.

16 Q. Is that a whistleblower complaint  
17 that you filed?

18 A. Yes.

19 Q. And another name that can be  
20 referred to is a qui tam complaint,  
21 correct?

22 A. Correct.

23 Q. Can you, to the best of your  
24 knowledge in layperson's terms, describe  
25 what a whistleblower or qui tam complaint

1 G. Kama

2 is?

3 A. I will try. It is a complaint --  
4 actually, can you clarify the question?

5 Q. Sure. Let me -- maybe I will  
6 assist you a little bit.

7 Is a whistleblower lawsuit  
8 brought as a private citizen on behalf of  
9 the government where you thought that fraud  
10 had been committed by your company against  
11 the government, correct?

12 A. Correct.

13 Q. That is why you brought this  
14 complaint, correct?

15 A. Correct.

16 Q. And without, again, providing any  
17 names of the -- of anybody, you filed this  
18 complaint against your former employee and  
19 its CEO, correct?

20 A. Yes, the former employer and the  
21 CEO.

22 Q. That's right. Thank you.

23 You brought this qui tam  
24 complaint because you witnessed misconduct  
25 and fraud against the state by a prior

1 G. Kama

2 employer, correct?

3 A. Correct.

4 Q. Just quickly, were you terminated  
5 as a result of raising your concerns about  
6 misconduct?

7 A. Yes.

8 Q. You reported this to -- basically  
9 the number -- directly to the number 2  
10 person at the company, is that correct?

11 A. Reported the misconduct?

12 Q. Yes.

13 A. Yes.

14 Q. You reported it to the CEO's  
15 right-hand man, correct?

16 A. Correct.

17 Q. What was that individual's title?

18 A. Head of strategic planning.

19 Q. In that company that you worked  
20 for from 2015 to 2016, you reported for the  
21 most part directly to the CEO, is that  
22 correct?

23 A. That's correct.

24 Q. And you had lots of contact with  
25 the CEO during your tenure there, correct?

<p style="text-align: right;">Page 38</p> <p>1 G. Kama</p> <p>2 A. Yes.</p> <p>3 Q. Now, approximately when did you</p> <p>4 file this complaint?</p> <p>5 A. April of 2016.</p> <p>6 Q. Is this action still pending?</p> <p>7 A. No.</p> <p>8 Q. Was it settled?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know whether or not the</p> <p>11 EDA was ever made aware of the filing or</p> <p>12 existence of this complaint?</p> <p>13 A. I don't know.</p> <p>14 Q. Now, I ask you to turn to the</p> <p>15 complaint. We are going to use this as a</p> <p>16 guide since you have very specific</p> <p>17 allegations in it.</p> <p>18 Would you please read into the</p> <p>19 record the first highlighted introductory</p> <p>20 sentence. I believe it's on the first page</p> <p>21 and it starts, "This is an action by qui</p> <p>22 tam relator," do you see it?</p> <p>23 A. Yes.</p> <p>24 Q. Would you read that, please?</p> <p>25 A. Sure.</p>	<p style="text-align: right;">Page 39</p> <p>1 G. Kama</p> <p>2 "This is an action by qui tam</p> <p>3 relator Gulsen Kama on behalf of the state</p> <p>4 of New Jersey to recover penalties and</p> <p>5 damages arising from the submission of</p> <p>6 false information by the company and CEO to</p> <p>7 the New Jersey Economic Development</p> <p>8 Authority. Relator Gulsen Kama also brings</p> <p>9 in her own name supplemental claims against</p> <p>10 her employer, the company, in connection</p> <p>11 with the unlawful termination of her</p> <p>12 employment."</p> <p>13 Q. Some of my questions may seem a</p> <p>14 little redundant. I just want to make sure</p> <p>15 we unpack everything and make it as clear</p> <p>16 as possible.</p> <p>17 You are the relator, correct?</p> <p>18 A. Correct.</p> <p>19 Q. At the time this company -- I</p> <p>20 think I've already said this -- you were</p> <p>21 the VP of financial planning and analysis,</p> <p>22 is that correct?</p> <p>23 A. Correct.</p> <p>24 Q. And you reported to the CEO for</p> <p>25 the most part, is that correct?</p>
<p style="text-align: right;">Page 40</p> <p>1 G. Kama</p> <p>2 A. Correct.</p> <p>3 Q. In your qui tam whistleblower</p> <p>4 complaint, there were two EDA programs that</p> <p>5 were involved, is that correct?</p> <p>6 A. Correct.</p> <p>7 Q. And would you tell us what the</p> <p>8 two programs were involved?</p> <p>9 A. BEIP and Grow New Jersey.</p> <p>10 Q. And do you know what the</p> <p>11 acronym -- can you tell me what the acronym</p> <p>12 BEIP stands for?</p> <p>13 A. Business Economic Incentive</p> <p>14 Program.</p> <p>15 Q. Close. Business Employment</p> <p>16 Incentive Program.</p> <p>17 Let's focus for a second, when</p> <p>18 you joined the company, had they already</p> <p>19 been awarded the BEIP -- we'll call it a</p> <p>20 BEIP -- award from EDA?</p> <p>21 A. Yes.</p> <p>22 Q. And do you know approximately,</p> <p>23 based on working at the company, when they</p> <p>24 received the BEIP award, when they were</p> <p>25 granted?</p>	<p style="text-align: right;">Page 41</p> <p>1 G. Kama</p> <p>2 A. In 2001.</p> <p>3 Q. Two thousand --</p> <p>4 A. 2001.</p> <p>5 Q. Can you just generally, to the</p> <p>6 best of your knowledge, describe what a</p> <p>7 BEIP program is?</p> <p>8 A. I'll try. It is an incentive</p> <p>9 given to companies to either retain or</p> <p>10 create jobs in any given state.</p> <p>11 Q. And how long was this company</p> <p>12 that you worked for supposed to remain in</p> <p>13 compliance with the BEIP program?</p> <p>14 A. Through October 1, 2016.</p> <p>15 Q. Why don't you take a quick look</p> <p>16 at paragraphs 11 through 13 of your</p> <p>17 complaint. I just want to make sure.</p> <p>18 And if you want to read it into</p> <p>19 the record, that's fine, because the next</p> <p>20 question -- go ahead. Read it.</p> <p>21 A. Oh, read it?</p> <p>22 Q. No, read it to yourself if you</p> <p>23 want and I'll ask you a question, OK?</p> <p>24 A. Sure.</p> <p>25 Q. My question is -- if you want to</p>

1 G. Kama  
 2 read it, it's fine -- could you elaborate  
 3 on the misconduct that you witnessed in  
 4 connection with the BEIP grant?  
 5 A. One of the requirements of the  
 6 BEIP plan was having a minimum number of  
 7 employees employed in the state of New  
 8 Jersey. And the company had fallen below  
 9 that minimum or had lowered that minimum  
 10 number of employees.  
 11 Q. Which put them in violation of  
 12 the BEIP grant, right?  
 13 A. They were not compliant.  
 14 Q. And how long, to your knowledge,  
 15 was the company not compliant with the  
 16 rules and regulations of the BEIP grant?  
 17 A. At least 18 months.  
 18 Q. And was the company required to  
 19 certify its employment numbers for the BEIP  
 20 award to EDA?  
 21 A. On an annual basis, yes.  
 22 Q. And did they do so?  
 23 A. No, not to my knowledge.  
 24 Q. And to your knowledge, did the  
 25 EDA ever learn that this company was out of

1 G. Kama  
 2 compliance with the BEIP rules and  
 3 regulations?  
 4 A. Not at that time, but later, yes.  
 5 Q. Approximately when to your  
 6 knowledge did the EDA learn that this  
 7 company was out of compliance with the BEIP  
 8 award?  
 9 A. Sometime after the company filed  
 10 the application for the Grow New Jersey.  
 11 Q. Were you working at the company  
 12 at the time?  
 13 A. I was.  
 14 Q. And how did you -- from whom did  
 15 you learn this information? Titles,  
 16 please.  
 17 A. Head of strategy.  
 18 Q. This was the right-hand man to  
 19 the CEO?  
 20 A. Correct.  
 21 Q. Did you know what happened when  
 22 the EDA learned or was made aware that the  
 23 company was out of compliance with the  
 24 rules and regulations of the BEIP grant?  
 25 A. Can you be more specific?

1 G. Kama  
 2 Q. Was there a certain amount of  
 3 money that the company was awarded as a  
 4 result of the BEIP grant?  
 5 A. There was money awarded to the  
 6 company as part of the BEIP grant.  
 7 Q. Was it, to the best of your  
 8 recollection, about 2,600,000 dollars?  
 9 A. Correct.  
 10 Q. What, if anything, happened, to  
 11 your knowledge, when the EDA learned that  
 12 the company was out of compliance with the  
 13 BEIP award?  
 14 A. The company --  
 15 Q. I am sorry, when EDA learned that  
 16 the company was out of compliance.  
 17 A. The company would have been  
 18 required to pay back all the incentives  
 19 that it had received until that point.  
 20 Q. Which is about 2,600,000 dollars,  
 21 correct?  
 22 A. That is the grant amount. I  
 23 don't know exactly how much they had  
 24 received up until that point.  
 25 Q. Understood.

1 G. Kama  
 2 Did the company, to your  
 3 knowledge, enter into some kind of  
 4 settlement with EDA?  
 5 A. Yes.  
 6 Q. For how much money?  
 7 A. 268 or -70,000 dollars.  
 8 Q. So approximately 10 percent of  
 9 what the overall award was, correct?  
 10 A. Correct.  
 11 Q. Were you involved at all in the  
 12 negotiation for the return of this money?  
 13 A. I was the financial person  
 14 providing the numbers and analysis  
 15 supporting the grant application.  
 16 Q. With regard to BEIP?  
 17 A. The Grow New Jersey, I'm sorry.  
 18 Q. I'm talking about BEIP.  
 19 A. I'm sorry. I apologize. No, I  
 20 was not.  
 21 Q. Right. How did you learn that  
 22 the company had reached a settlement with  
 23 the EDA and had to return the money?  
 24 A. When we were putting together the  
 25 application for the Grow New Jersey

1 G. Kama  
 2 incentive, we actually -- the company ended  
 3 up engaging a consultant firm.  
 4 Q. And you learned from the  
 5 consulting firm?  
 6 A. Correct.  
 7 Q. And you found out that the  
 8 company had returned this money while you  
 9 were working there, correct?  
 10 A. Correct.  
 11 Q. And you learned this from the  
 12 consulting firm?  
 13 A. Correct.  
 14 Q. Just to confirm, the company was  
 15 out of compliance with the rules and  
 16 regulations of the BEIP program, correct?  
 17 A. Correct.  
 18 Q. Now, let's go to the Grow New  
 19 Jersey program. I would like to talk more  
 20 about the alleged false statements that you  
 21 made that you set forth in your complaint  
 22 in connection with the Grow New Jersey  
 23 grant that you mentioned.  
 24 In your complaint on page 12,  
 25 paragraph 96, you allege that "The company,

1 G. Kama  
 2 by and through its officers, agents and  
 3 employees, knowingly presented or caused to  
 4 be presented to the New Jersey Economic  
 5 Development Authority fraudulent  
 6 information for approval of a grant  
 7 pursuant to the Grow New Jersey Assistance  
 8 Act."  
 9 Do you see that? Is that what  
 10 you stated in paragraph 96 to your  
 11 complaint?  
 12 A. Yes.  
 13 Q. And in your own words, would you  
 14 just describe what the conduct that you  
 15 witnessed was?  
 16 A. There was untruthful  
 17 representation of information in the  
 18 application submitted.  
 19 Q. And did this have to do with the  
 20 fact -- just let me help you here a little  
 21 bit -- that this company lied on its  
 22 application and supporting certification  
 23 that jobs were at risk of leaving New  
 24 Jersey because the company was not  
 25 contemplating -- was actually not

1 G. Kama  
 2 contemplating leaving New Jersey?  
 3 A. Correct.  
 4 Q. When did you learn to come --  
 5 when did you come to learn about, that the  
 6 company had applied for a tax incentive  
 7 award from EDA under the Grow New Jersey  
 8 program? Approximately when?  
 9 A. The application was filed in --  
 10 on March -- mid March 2015.  
 11 Q. So March, April, 2015, somewhere  
 12 around that time frame?  
 13 A. Right. March 18, 2015 was the  
 14 application date.  
 15 Q. OK, got it.  
 16 How did you come to learn about  
 17 the misconduct?  
 18 A. As I was interviewing with the  
 19 company back in the fall of 2014, I  
 20 actually was interviewed by the then CFO,  
 21 chief financial officer, of the company.  
 22 And at the time I actually was  
 23 working for a company that was on Wall  
 24 Street and I did not enjoy my commute. So  
 25 my number one concern, you know, being --

1 G. Kama  
 2 looking for a new job was having an easier  
 3 commute, requiring the company to be  
 4 located in New Jersey.  
 5 And I was told by the then CFO  
 6 that the company was considering  
 7 relocation. However, all of the location  
 8 options they were considering were in the  
 9 state of New Jersey. So I had reason to  
 10 believe that.  
 11 Q. When you first started working at  
 12 the company, there was no CFO, is that  
 13 correct?  
 14 A. He left on the first day I  
 15 started.  
 16 Q. So you ostensibly became the CFO,  
 17 without the title?  
 18 A. Correct.  
 19 Q. In terms of the Grow New Jersey  
 20 application process, were you the key  
 21 financial person who spearheaded gathering  
 22 all the data, the financial data for the  
 23 company?  
 24 A. Yes, I was.  
 25 Q. And were you interacting -- in

<p style="text-align: right;">Page 50</p> <p>1 G. Kama</p> <p>2 connection with the application for the</p> <p>3 Grow New Jersey program, were you act</p> <p>4 interacting with the CEO and his right-hand</p> <p>5 man on a regular basis?</p> <p>6 A. I was.</p> <p>7 Q. When you were putting together</p> <p>8 the paperwork, what did you notice about</p> <p>9 the locations?</p> <p>10 A. The locations that were being</p> <p>11 considered all -- they were all in New</p> <p>12 Jersey.</p> <p>13 Q. That's -- you knew that the</p> <p>14 company was just going to stay in New</p> <p>15 Jersey, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And with regard to the</p> <p>18 application, what was put in the</p> <p>19 application?</p> <p>20 A. That different alternatives,</p> <p>21 out-of-state alternatives were being</p> <p>22 considered.</p> <p>23 Q. Out-of-state alternatives were</p> <p>24 being considered?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 51</p> <p>1 G. Kama</p> <p>2 Q. You knew that -- did you know</p> <p>3 that not to be true?</p> <p>4 A. I did.</p> <p>5 Q. That was based on -- you</p> <p>6 mentioned when you interviewed, the then</p> <p>7 CFO made that representation to you, is</p> <p>8 that correct?</p> <p>9 A. Correct.</p> <p>10 Q. Did the CEO or right-hand man</p> <p>11 also tell you, once you began working</p> <p>12 there, that they weren't moving out of New</p> <p>13 Jersey?</p> <p>14 A. Yes.</p> <p>15 Q. Can you tell us -- and I'm kind</p> <p>16 of focusing on the consultant now, without</p> <p>17 naming the company, in connection with the</p> <p>18 application for the Grow New Jersey</p> <p>19 program, the company hired a consulting</p> <p>20 firm, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And what, if anything, did you</p> <p>23 learn from the consulting program about the</p> <p>24 submission of the application or what was</p> <p>25 going to go in it?</p>
<p style="text-align: right;">Page 52</p> <p>1 G. Kama</p> <p>2 A. There was a CEO certification</p> <p>3 required as part of the application. And</p> <p>4 accompanying the CEO certification, we were</p> <p>5 at the time advised by the consulting firm</p> <p>6 that we needed to have credible</p> <p>7 out-of-state alternatives included in the</p> <p>8 application.</p> <p>9 Q. Why?</p> <p>10 A. Because that was one of the --</p> <p>11 well, actually, the key requirement in the</p> <p>12 Grow New Jersey incentive.</p> <p>13 Q. So let me just make sure we</p> <p>14 unpack this.</p> <p>15 The consulting firm advised your</p> <p>16 company, its CEO, you and the right-hand</p> <p>17 man, that in order to be eligible for the</p> <p>18 Grow New Jersey program, that in the</p> <p>19 application, you had to put down that the</p> <p>20 company might move out of state unless it</p> <p>21 was going to get these tax incentives under</p> <p>22 the Grow New Jersey program?</p> <p>23 A. I do not -- I was just going</p> <p>24 to --</p> <p>25 Q. Go ahead.</p>	<p style="text-align: right;">Page 53</p> <p>1 G. Kama</p> <p>2 A. -- clarify one thing.</p> <p>3 I don't know the exact language,</p> <p>4 but I don't think it said "might move." I</p> <p>5 think it said "will move out of state" if</p> <p>6 it doesn't receive the incentive.</p> <p>7 Q. And in the application, to your</p> <p>8 knowledge, the application that was made to</p> <p>9 the Grow New Jersey program, the CEO</p> <p>10 certifications stated that the company</p> <p>11 would move out of New Jersey unless it got</p> <p>12 the tax incentive award from the Grow New</p> <p>13 Jersey program?</p> <p>14 A. Correct.</p> <p>15 Q. And that false statement was</p> <p>16 placed in the CEO certification at the</p> <p>17 advice of the consulting firm, correct?</p> <p>18 A. Correct.</p> <p>19 Q. And you had direct contact with</p> <p>20 the consulting firm, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And you mentioned that the</p> <p>23 consulting firm also had an opinion or gave</p> <p>24 some kind of opinion to the company about</p> <p>25 its eligibility and involvement in the BEIP</p>

<p style="text-align: right;">Page 54</p> <p>1 G. Kama</p> <p>2 program, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And can you tell us what the</p> <p>5 consulting firm told your company about the</p> <p>6 BEIP program?</p> <p>7 A. Two things. Under the BEIP</p> <p>8 program, the company was obligated to stay</p> <p>9 in New Jersey through the expiration of the</p> <p>10 BEIP program, which was October 1, 2016,</p> <p>11 and had the company chosen to leave the</p> <p>12 state before that date, the company might</p> <p>13 be required to pay the full amount of</p> <p>14 incentive it had received up to that point</p> <p>15 under the BEIP program.</p> <p>16 Q. That was -- the company is</p> <p>17 required to stay in the state and meet the</p> <p>18 requirements of the BEIP program until in</p> <p>19 or about October of 2016, correct?</p> <p>20 A. Correct.</p> <p>21 Q. And the applications in the Grow</p> <p>22 New Jersey program was made in, I think you</p> <p>23 said, on or about March 18, 2015, correct?</p> <p>24 A. Correct.</p> <p>25 Q. Was there some type of</p>	<p style="text-align: right;">Page 55</p> <p>1 G. Kama</p> <p>2 cost-benefit analysis that the consulting</p> <p>3 firm prepared in connection with your Grow</p> <p>4 New Jersey application?</p> <p>5 A. Yes.</p> <p>6 Q. Could you tell us about that?</p> <p>7 A. The analysis included -- of the</p> <p>8 locations, the in-state and out-of-state</p> <p>9 being considered for the relocation and the</p> <p>10 financials associated with those locations.</p> <p>11 Q. You mentioned in-state and</p> <p>12 out-of-state. Would you please turn to</p> <p>13 page 10 of your complaint, paragraph 71.</p> <p>14 Was the cost-benefit analysis</p> <p>15 included as part of the application to the</p> <p>16 Grow New Jersey program?</p> <p>17 A. Yes.</p> <p>18 Q. And what -- that submission was</p> <p>19 made, to the best of your knowledge, to</p> <p>20 EDA, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And what -- if you look at</p> <p>23 paragraph 71, what out-of-state</p> <p>24 alternatives were placed or were mentioned</p> <p>25 in the cost-benefit analysis?</p>
<p style="text-align: right;">Page 56</p> <p>1 G. Kama</p> <p>2 A. The out-of-state alternative was</p> <p>3 called a blended alternative, and the</p> <p>4 reason for that was it was a combination of</p> <p>5 a New York City location and Sarasota,</p> <p>6 Florida location.</p> <p>7 Q. As part of the company's analysis</p> <p>8 that if they didn't get the Grow New Jersey</p> <p>9 award, they would leave the state of New</p> <p>10 Jersey, correct?</p> <p>11 A. Correct.</p> <p>12 Q. And you saw this cost-benefit</p> <p>13 analysis?</p> <p>14 A. I provided the numbers for the</p> <p>15 cost-benefit analysis.</p> <p>16 Q. To the best of your knowledge,</p> <p>17 the idea or the concept that the company</p> <p>18 was going to use this blended program of</p> <p>19 Sarasota and New York City was a false</p> <p>20 representation?</p> <p>21 A. Correct.</p> <p>22 Q. Who prepared the final version of</p> <p>23 the relocation and compensation and related</p> <p>24 summaries of the New Jersey, New York and</p> <p>25 Florida scenarios?</p>	<p style="text-align: right;">Page 57</p> <p>1 G. Kama</p> <p>2 You know what, let me back up.</p> <p>3 Just look at paragraph 75 of your</p> <p>4 complaint.</p> <p>5 A. That was the consulting firm</p> <p>6 then.</p> <p>7 Q. They prepared that?</p> <p>8 A. Yes.</p> <p>9 Q. And who did they work in tandem</p> <p>10 with, the company SVP?</p> <p>11 A. The company head of strategy,</p> <p>12 yes.</p> <p>13 Q. And that was the CEO's right-hand</p> <p>14 man, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Are you aware of whether or not</p> <p>17 this consulting, consultant or consulting</p> <p>18 firm was responsible for submitting the</p> <p>19 company's entire application to the EDA?</p> <p>20 A. I was.</p> <p>21 Q. Do you know whether or not -- who</p> <p>22 submitted the application for Grow New</p> <p>23 Jersey to the EDA?</p> <p>24 A. To the best of my knowledge, the</p> <p>25 consulting firm did.</p>

<p style="text-align: right;">Page 58</p> <p>1 G. Kama</p> <p>2 Q. I ask you to look at page 13,</p> <p>3 paragraph 98 of your complaint.</p> <p>4 And do you see that there you</p> <p>5 state that "The company executives</p> <p>6 knowingly presented a false CEO</p> <p>7 certification to the New Jersey Economic</p> <p>8 Development Authority to gain approval of a</p> <p>9 Grow New Jersey assistance grant."</p> <p>10 Correct?</p> <p>11 A. Correct.</p> <p>12 Q. That's what paragraph 98 says,</p> <p>13 correct?</p> <p>14 A. Right.</p> <p>15 Q. And just to go back over, what is</p> <p>16 the CEO certification that you reference in</p> <p>17 your complaint?</p> <p>18 A. It is a required document as part</p> <p>19 of the Grow New Jersey application, and</p> <p>20 there are two key requirements or</p> <p>21 certification components to it.</p> <p>22 One is the existing jobs in New</p> <p>23 Jersey are at risk of being located out of</p> <p>24 state. And then the second requirement is</p> <p>25 the jobs, existing jobs will relocate out</p>	<p style="text-align: right;">Page 59</p> <p>1 G. Kama</p> <p>2 of the state if the Grow New Jersey</p> <p>3 incentive is not granted.</p> <p>4 Q. And just take a quick look at</p> <p>5 paragraph 25 in your complaint.</p> <p>6 A. You said 25?</p> <p>7 Q. I am sorry, paragraph -- yes,</p> <p>8 complaint paragraph 25.</p> <p>9 A. OK.</p> <p>10 Q. And I'm just going to ask this</p> <p>11 question: Essentially, in the CEO</p> <p>12 certification, the CEO has to certify that,</p> <p>13 but for the grant, the company would leave</p> <p>14 the state, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Now, could you turn to page 8,</p> <p>17 paragraph 60 and read the highlighted</p> <p>18 portion of it.</p> <p>19 A. "The CEO certification was false</p> <p>20 and known by CEO to be false because, as of</p> <p>21 such date, the decision to relocate to</p> <p>22 Jersey City was already a done deal."</p> <p>23 Q. Sorry, go ahead.</p> <p>24 A. "The VP strategy knew the CEO</p> <p>25 certification was false but willingly</p>
<p style="text-align: right;">Page 60</p> <p>1 G. Kama</p> <p>2 cooperated with the submission to New</p> <p>3 Jersey of the false CEO certification."</p> <p>4 Q. Now, to yourself in your</p> <p>5 complaint, read -- just read complaint</p> <p>6 paragraph 28 and 41. And then I'll ask you</p> <p>7 a question. It has to do with what you</p> <p>8 just referenced as a done deal.</p> <p>9 Did you read paragraphs 28 and</p> <p>10 41?</p> <p>11 A. Yes.</p> <p>12 Q. Now, the question is, in the last</p> <p>13 answer that you gave you discussed done</p> <p>14 deal, so how did you know the decision to</p> <p>15 relocate within the state of New Jersey was</p> <p>16 a done deal?</p> <p>17 A. I heard the CEO of the company</p> <p>18 state that the relocation to Jersey City</p> <p>19 was a done deal in a meeting.</p> <p>20 Q. Was this before or after the</p> <p>21 application to Grow New Jersey was made?</p> <p>22 A. It was before.</p> <p>23 Q. Do you remember by any chance how</p> <p>24 much before?</p> <p>25 A. March 2.</p>	<p style="text-align: right;">Page 61</p> <p>1 G. Kama</p> <p>2 Q. Of?</p> <p>3 A. 2015.</p> <p>4 Q. OK. So about two weeks or so</p> <p>5 before the application was made?</p> <p>6 A. Yes, yes.</p> <p>7 Q. Could you look at page 13,</p> <p>8 paragraph 104, the highlighted section of</p> <p>9 it.</p> <p>10 I ask you to read that into the</p> <p>11 record, please.</p> <p>12 A. "Furthermore, the company always</p> <p>13 intended to move to Jersey City and had</p> <p>14 been negotiating an agreement to lease a</p> <p>15 Jersey City office space months before the</p> <p>16 New Jersey EDA board made any decision,</p> <p>17 and, therefore, it was false that the</p> <p>18 company would have relocated out of state</p> <p>19 but for the New Jersey Grow grant money."</p> <p>20 Q. To your knowledge, was the</p> <p>21 information -- to your knowledge, if you</p> <p>22 know, was the information concerning that</p> <p>23 it was a done deal to move to Jersey City</p> <p>24 provided to the EDA?</p> <p>25 A. To my knowledge, no.</p>



1 G. Kama

2 Q. To your knowledge, based on your  
3 interactions and conversations with CEO and  
4 the VP of strategy, had the company ever  
5 seriously considered moving out of the  
6 state of New Jersey?

7 A. No.

8 Q. Now, if you look at page 5,  
9 paragraph 32 of your complaint, you allege  
10 that you were asked by the company to look  
11 into the impact of a move to New York City  
12 and Florida.

13 A. Could you give me just a minute?  
14 The pages got reshuffled.

15 Q. No worries. Page 5, paragraph  
16 32. Do you want a new one that's not  
17 shuffled up?

18 A. That's all right.

19 Q. So you were asked, according to  
20 paragraph 32 of your complaint, by -- asked  
21 by the company to look into the impact of a  
22 move to New York City and Florida, correct?

23 A. Correct.

24 Q. Now, if it was a done deal, why  
25 were you asked to do an impact analysis of

1 G. Kama

2 a move to New Jersey -- to New York City  
3 and Sarasota, Florida.

4 MR. MEISNER: Can you repeat the  
5 question, please?

6 Q. Sure.

7 If it was a done deal, the  
8 company was staying, going to move to  
9 Jersey City, stay in the state of New  
10 Jersey, why then, to your knowledge, were  
11 you asked to do an analysis of the impact  
12 of a move to Sarasota, Florida and New York  
13 City?

14 And if you want to look at page  
15 7, paragraph 48, go right ahead, before  
16 answering the question.

17 A. The reason I was asked to look  
18 into the financials of relocating to New  
19 York and Florida was because a consultant  
20 company had advised the company that a  
21 credible out-of-state alternative should be  
22 included in the Grow New Jersey  
23 application.

24 Q. Now, were you asked to do this  
25 analysis before or after you learned from

1 G. Kama

2 the CEO of the company that staying in New  
3 Jersey was a done deal?

4 A. The statement by the CEO was made  
5 on March 2. I was asked to do the analysis  
6 on February 21. It was shortly before.

7 Q. And how at that time did you know  
8 in February of 2015 that there was no  
9 possibility the company was going to move  
10 out of the state of New Jersey?

11 A. Based on my first interview with  
12 the then CFO. I also found out after I  
13 started with the company, there was an  
14 employee survey conducted for the different  
15 alternative locations, and all three  
16 locations included in that employee survey  
17 were in New Jersey. And also the head of  
18 strategy, in an e-mail to the consulting  
19 firm, stated that the Jersey City location  
20 was the company's top choice.

21 Q. And this was all before you were  
22 asked to do the analysis?

23 A. Correct.

24 Q. Will you look, turn to page 4 and  
25 look at paragraphs 25 and 26.

1 G. Kama

2 A. Yes.

3 Q. And so is it fair to say that  
4 what paragraphs 25 and 26 are stating is  
5 that the consultant advised the company to  
6 generate and falsify evidence making it  
7 appear, after the fact, that the company  
8 would leave the state of New Jersey if it  
9 did not receive grant money from the state  
10 of New Jersey?

11 A. Correct.

12 Q. And this was -- this was done at  
13 the advice of the consultant, correct?

14 A. Correct.

15 Q. And is it fair to say that the  
16 company was following the advice of the  
17 consultant?

18 A. It was my belief that the company  
19 was following the advice.

20 Q. Specifically the CEO and head of  
21 strategy, correct?

22 A. Correct.

23 Q. To your knowledge -- had you had  
24 any interaction with the consulting firm?

25 A. I did.

<p style="text-align: right;">Page 66</p> <p>1 G. Kama</p> <p>2 Q. To your knowledge, based on your</p> <p>3 conversations with the representatives of</p> <p>4 the consulting firm, is it fair to say that</p> <p>5 they knew that the information contained in</p> <p>6 the CEO certification was false?</p> <p>7 A. They were given all the</p> <p>8 information that I was aware of.</p> <p>9 Q. And that is including that the</p> <p>10 three alternatives for relocation were</p> <p>11 really -- were all within the state of New</p> <p>12 Jersey --</p> <p>13 A. Yes.</p> <p>14 Q. -- correct?</p> <p>15 Just let me finish the question</p> <p>16 before you answer, even though you can</p> <p>17 anticipate what I am going to say.</p> <p>18 A. OK.</p> <p>19 Q. Would you look at page 9,</p> <p>20 paragraph 68.</p> <p>21 A. Yes.</p> <p>22 Q. There, in paragraph 68 of your</p> <p>23 complaint, you allege that a consultant</p> <p>24 told the company, "We will want to state</p> <p>25 clearly that the alternative is the</p>	<p style="text-align: right;">Page 67</p> <p>1 G. Kama</p> <p>2 low-cost option and that your existing</p> <p>3 operations and excess space in Florida</p> <p>4 provide you with an opportunity to achieve</p> <p>5 significant cost savings for a cohort of</p> <p>6 your employment, roughly 50 percent of your</p> <p>7 current New Jersey employment."</p> <p>8 Is that what you state here?</p> <p>9 A. Correct.</p> <p>10 Q. Is this part of the false record</p> <p>11 and representations that you mentioned</p> <p>12 before that were made to EDA?</p> <p>13 A. Yes.</p> <p>14 Q. And again, this was false because</p> <p>15 the company had no intention of leaving the</p> <p>16 state of New Jersey, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Please turn to paragraph -- page</p> <p>19 10, paragraph 71.</p> <p>20 Actually, never mind. Actually</p> <p>21 just read page -- paragraph 71 of page 10</p> <p>22 to yourself.</p> <p>23 A. Yes.</p> <p>24 Q. That paragraph had to do with the</p> <p>25 cost-benefit analysis for New York City and</p>
<p style="text-align: right;">Page 68</p> <p>1 G. Kama</p> <p>2 Sarasota, Florida, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And that contained false</p> <p>5 information, to the best of your knowledge,</p> <p>6 is that correct?</p> <p>7 A. Correct.</p> <p>8 Q. And that was because the company</p> <p>9 wasn't considering moving to either?</p> <p>10 A. Correct.</p> <p>11 Q. And just look at complaint --</p> <p>12 paragraph 76 of your complaint.</p> <p>13 We are getting close to the end.</p> <p>14 A. Yes.</p> <p>15 Q. Read that paragraph to us.</p> <p>16 A. "That the location, compensation</p> <p>17 and related summaries represented to the</p> <p>18 New Jersey EDA that there still was an</p> <p>19 alternative plan to bifurcate the company</p> <p>20 headquarters between New York and Sarasota,</p> <p>21 Florida, even though the counterproposal</p> <p>22 for the office space at 222 Broadway, New</p> <p>23 York, New York, had since expired."</p> <p>24 Q. So again, that was another false,</p> <p>25 part of the false statement made to EDA,</p>	<p style="text-align: right;">Page 69</p> <p>1 G. Kama</p> <p>2 correct?</p> <p>3 A. Correct.</p> <p>4 Q. So to the best of your knowledge,</p> <p>5 the consultant was a knowing participant in</p> <p>6 the company's fraud on EDA, correct?</p> <p>7 (Pause)</p> <p>8 Q. Well, do you want me to clarify?</p> <p>9 Sure.</p> <p>10 The consultant submitted the</p> <p>11 application to EDA with all of this false</p> <p>12 information, correct?</p> <p>13 A. That is my understanding.</p> <p>14 Q. And the consultant was aware of</p> <p>15 all the information that you were, the same</p> <p>16 information you were, that contradicted</p> <p>17 what was put in the application, correct?</p> <p>18 A. Certainly had access to that</p> <p>19 information, yes.</p> <p>20 Q. And again, with regards to the</p> <p>21 BEIP award, that award the company received</p> <p>22 back in 2001 through the EDA, correct?</p> <p>23 A. Correct.</p> <p>24 Q. And at the time that all this was</p> <p>25 going on with regard to Grow New Jersey</p>

<p style="text-align: right;">Page 70</p> <p>1 G. Kama</p> <p>2 application, the company was not in</p> <p>3 compliance with the BEIP award, correct?</p> <p>4 A. Correct.</p> <p>5 Q. Now, did you raise your concerns</p> <p>6 about the misrepresentations or false</p> <p>7 statements in the Grow New Jersey</p> <p>8 application to either the CEO or the VP of</p> <p>9 strategy at this company?</p> <p>10 A. I did raise some to the VP of</p> <p>11 strategy.</p> <p>12 Q. And what did you -- why don't you</p> <p>13 look at complaint paragraph 38 and read</p> <p>14 that, please.</p> <p>15 A. Could you give me a page number?</p> <p>16 Q. Sure.</p> <p>17 A. I have it.</p> <p>18 Q. You got it?</p> <p>19 A. Um-hm. You asked me to read it,</p> <p>20 right?</p> <p>21 Q. Yeah.</p> <p>22 A. "On or about February 25, 2015,</p> <p>23 relator objected to the CEO certification,</p> <p>24 and she did so when meeting with the VP of</p> <p>25 strategy regarding the CEO's certification</p>	<p style="text-align: right;">Page 71</p> <p>1 G. Kama</p> <p>2 and advising him that it was not true that</p> <p>3 the company seriously considered moving its</p> <p>4 headquarters outside the state of New</p> <p>5 Jersey."</p> <p>6 Q. And again, the VP of strategy was</p> <p>7 the CEO's right-hand man, correct?</p> <p>8 A. Correct. Did you want me to read</p> <p>9 the rest?</p> <p>10 Q. Yeah, I'm sorry.</p> <p>11 A. "In response, the VP of strategy</p> <p>12 told relator not to worry about it and</p> <p>13 instructed her to focus only on the numbers</p> <p>14 in support of the company's New Jersey Grow</p> <p>15 grant application."</p> <p>16 Q. So when you told him, the VP of</p> <p>17 strategy, about your objections to the CEO</p> <p>18 certification, he told you not to worry</p> <p>19 about it?</p> <p>20 A. Correct.</p> <p>21 Q. Eventually this company was</p> <p>22 granted a Grow New Jersey award, correct?</p> <p>23 A. Correct.</p> <p>24 Q. And after they were granted the</p> <p>25 award, forgetting all the false</p>
<p style="text-align: right;">Page 72</p> <p>1 G. Kama</p> <p>2 representations in the submission</p> <p>3 application, submission of the application,</p> <p>4 after they actually got the award, were</p> <p>5 they in compliance with the rules and</p> <p>6 regulations of the Grow New Jersey program?</p> <p>7 A. No.</p> <p>8 Q. And why don't you look at page</p> <p>9 11, paragraph 84 and 85, and tell us why it</p> <p>10 is -- you can read it or say it in your</p> <p>11 words -- why it is they were in not</p> <p>12 compliance with the award program, Grow New</p> <p>13 Jersey, after getting it?</p> <p>14 A. After getting the New Jersey Grow</p> <p>15 grant, the company ended up relocating its</p> <p>16 headquarters to Jersey City. However, part</p> <p>17 of that relocation actually moved the human</p> <p>18 resources and payroll departments to</p> <p>19 Florida.</p> <p>20 So they never came to the Jersey</p> <p>21 City location, and doing so violated the</p> <p>22 minimum threshold required in number of</p> <p>23 employees that needed to be in Jersey, in</p> <p>24 New Jersey.</p> <p>25 Q. In order to qualify or continue</p>	<p style="text-align: right;">Page 73</p> <p>1 G. Kama</p> <p>2 to qualify for the Grow New Jersey award,</p> <p>3 is that correct?</p> <p>4 A. Correct.</p> <p>5 Q. What was that minimum threshold</p> <p>6 of employees they were supposed to have in</p> <p>7 New Jersey?</p> <p>8 A. 69.</p> <p>9 Q. As a result of, when they</p> <p>10 relocated and sent some people, I think you</p> <p>11 said HR and another department, to</p> <p>12 Sarasota, Florida, the company fell behind</p> <p>13 the minimum threshold of 69?</p> <p>14 A. Correct. Correct.</p> <p>15 Q. So the violations, the company's</p> <p>16 violations of the Grow New Jersey program</p> <p>17 commenced at the application process and</p> <p>18 continued after the award of the -- award</p> <p>19 under the Grow New Jersey program, correct?</p> <p>20 A. Correct.</p> <p>21 Q. Now, when did you learn that the</p> <p>22 company was not in compliance with</p> <p>23 maintaining the minimum threshold of 69</p> <p>24 employees in the state of New Jersey?</p> <p>25 When?</p>

1 G. Kama

2 A. It was in early December, 2015.

3 Q. Did you raise this with the  
4 company?

5 A. I did. It was actually a meeting  
6 held where several company executives were  
7 present.

8 Q. Did you tell the CEO and  
9 representatives of HR that they were not in  
10 compliance with the Grow New Jersey  
11 program?

12 A. I did.

13 Q. And what was their reaction?

14 A. I don't know if there was a  
15 reaction.

16 Q. But based on what you are saying  
17 here today, you told them in December of  
18 2015 that they were not in compliance with  
19 the Grow New Jersey program --

20 A. Correct.

21 Q. -- in terms of maintaining the  
22 minimum number of employees in the state in  
23 order to benefit from that program,  
24 correct?

25 A. Correct.

1 G. Kama

2 Q. That was December 2015, right?

3 A. Yes.

4 Q. And then in February of 2016 you  
5 were fired?

6 A. I was.

7 Q. And that was about approximately  
8 three months -- or I'm sorry, two months  
9 after you told them they were not in  
10 compliance with the Grow New Jersey  
11 program, correct?

12 A. Correct.

13 MR. WILLIAMS: That is all I  
14 have, ma'am. I want to thank you on  
15 behalf of the task force. I am sorry,  
16 Mr. Chen, any other questions?

17 MR. CHEN: I just have one  
18 follow-up.

19 If you know, Ms. Kama, do you  
20 know when your former employer decided  
21 to move the human resources and payroll  
22 department to Florida?

23 THE WITNESS: It was shortly  
24 after -- or as part of the move from  
25 Parsippany to Jersey City. I'm trying

1 G. Kama

2 to remember what -- I believe it was  
3 September of 2015.

4 MR. CHEN: OK, all right. Thank  
5 you.

6 MR. WILLIAMS: Thank you very  
7 much for coming here today.

8 Mr. Meisner and Mr. Salmon, thank  
9 you for coming here.

10 MR. WALDEN: Let me make sure the  
11 record is clear about two things.  
12 Number one, because Ms. Kama was  
13 subpoenaed, there is a provision of the  
14 law that entitles the EDA, which is  
15 really the subject of day one of the  
16 hearings, to cross-examine her.

17 We have consulted with counsel  
18 from the EDA, and they have decided at  
19 this point not to exercise that right  
20 now, although they reserved the right  
21 to cross-examine her at a future  
22 proceeding.

23 Secondly, irrespective of the  
24 fact -- you don't have to stay. You  
25 can if you want to.

1 P. Degnan

2 So irrespective of the fact that  
3 we used the subpoena to secure  
4 Ms. Kama's appearance, under the law,  
5 any company or individual who is being  
6 adversely affected by testimony has the  
7 right to submit a short written sworn  
8 statement putting forward their  
9 perspective.

10 We have consulted with counsel  
11 for the former employer, and they have  
12 elected the same thing. They are not  
13 going to submit something for us to  
14 read into the record today, but they  
15 may do so at a future proceeding.

16 With that, may I please call  
17 Comptroller Philip Degnan to the stand.

18 MR. CHEN: Do you solemnly swear  
19 or affirm that the testimony you are  
20 about to give is the truth, the whole  
21 truth and nothing but the truth?

22 THE WITNESS: I do.

23 MR. CHEN: Thank you very much  
24 for coming.

25 THE WITNESS: Thank you for

<p style="text-align: right;">Page 78</p> <p>1 P. Degnan 2 having me. 3 EXAMINATION BY 4 MR. WALDEN: 5 Q. Good morning. 6 A. Good morning. 7 Q. How are you? 8 A. I'm doing OK. 9 Q. Do you want to introduce the 10 person standing to your right? 11 A. Sure. This is Kevin Walsh from 12 the Gibbons firm in Newark, New Jersey. 13 Q. Would you please say and spell 14 your name for the record, Comptroller. 15 A. Sure. It's Philip Degnan. 16 P-H-I-L-I-P, D-E-G-N-A-N. 17 Q. First of all, on behalf of us 18 all, we would very much like to thank your 19 office for cooperation, the information, 20 the time you have spent with us, and we 21 look forward to your continuing 22 cooperation. 23 Our goal today is further 24 understanding the finance of the audit, and 25 obviously the audit was very comprehensive.</p>	<p style="text-align: right;">Page 79</p> <p>1 P. Degnan 2 You filed it on January 19. We understand 3 that it's very dense, and it's very 4 complete. 5 But our main goal today is to try 6 to make the information as accessible as 7 possible to the layperson. And so I 8 understand that, as a general matter, you 9 wish not to go beyond the four corners of 10 the audit, and I'm going to, in my 11 questions, I will confine myself to that 12 operating rule. 13 But I will ask you questions just 14 to help people understand in an accessible 15 way the significance of some of your 16 findings. And I will at one point have a 17 follow-up request for you if you would 18 consider it, is that OK? 19 A. Of course. 20 Q. First, can you explain just so 21 everyone in the public understands, the 22 general roles and responsibilities of the 23 office of the comptroller? 24 A. So the comptroller's office is an 25 independent fiscal watchdog agency designed</p>
<p style="text-align: right;">Page 80</p> <p>1 P. Degnan 2 to promote efficiency, good government 3 practices, safeguard taxpayer funds. 4 In the office, we have four 5 divisions. Medicaid fraud division, and 6 that's just what it sounds like. It 7 doesn't commit Medicaid fraud; it 8 investigates Medicaid fraud. 9 In addition to that, we have a 10 procurement division. Our statute requires 11 that under certain amount thresholds, 12 executive branch for state procurements 13 have to be submitted to our office for a 14 review of the process that's being used. 15 We don't get into a good idea or bad idea 16 analysis, just simply whether we are using 17 the appropriate procurement process under 18 the circumstances. 19 We have an investigations 20 division that is -- performs general waste, 21 fraud and abuse investigations. 22 And most relevant to today, we 23 have our audit division that audits 24 agencies that receive executive branch 25 funds, school districts, municipalities,</p>	<p style="text-align: right;">Page 81</p> <p>1 P. Degnan 2 the EDA. And we would report publicly on 3 the findings of our audits. 4 Q. Thank you. That's very 5 comprehensive. Do I understand correctly 6 that the comptroller -- for those people 7 that are familiar with the structure of a 8 public corporation, there is something in a 9 public corporation that's usually called 10 "controller." 11 So is the comptroller the 12 government version of a controller company? 13 A. Yeah, no, I've talked to 14 comptrollers from other states, sometimes 15 they are called "controllers." The role in 16 this state is a little different than in 17 other states. 18 So I -- I don't know that I can 19 compare it to how a public company's 20 controller works. But I think in the 21 confines of the four divisions I just 22 discussed, that's where my authority lies. 23 Q. Let me turn my attention to the 24 audit itself. You filed the audit on 25 January 19 of this year?</p>

<p style="text-align: right;">Page 82</p> <p>1 P. Degnan</p> <p>2 A. Actually January 9.</p> <p>3 Q. 9th, thank you. If I make a</p> <p>4 mistake, be sure to -- could you give us a</p> <p>5 general understanding of what the focus of</p> <p>6 the audit was?</p> <p>7 A. Sure. The focus of the audit was</p> <p>8 to take a deep, independent look at the</p> <p>9 manner in which the Economic Development</p> <p>10 Authority was administering five different</p> <p>11 tasks in our programs. And it's -- that</p> <p>12 was the sort of the umbrella of the</p> <p>13 project.</p> <p>14 Q. Would I understand this correctly</p> <p>15 to be something you would refer to as a</p> <p>16 performance audit?</p> <p>17 A. Yes.</p> <p>18 Q. And can you describe for us the</p> <p>19 difference between a performance audit and</p> <p>20 another kind of audit, for example, a</p> <p>21 financial audit?</p> <p>22 A. Sure. A financial audit,</p> <p>23 honestly, is what most people think when</p> <p>24 you use the word "audit." It's a look at</p> <p>25 the financial well-being of a company, for</p>	<p style="text-align: right;">Page 83</p> <p>1 P. Degnan</p> <p>2 example, balance sheets, accounts</p> <p>3 receivable, revenue streams, things like</p> <p>4 that.</p> <p>5 A performance audit is the</p> <p>6 independent examination of a program or an</p> <p>7 agency, in this case, for example, where we</p> <p>8 focus more on the process that's being used</p> <p>9 by the agency, the process that's being</p> <p>10 employed, to make sure that that agency or</p> <p>11 program is complying with appropriate</p> <p>12 statutes, rules, regulations, that they are</p> <p>13 employing best practices to safeguard</p> <p>14 funds, so it is less about the finances in</p> <p>15 a traditional audit sense and more about</p> <p>16 the processes that are being employed for</p> <p>17 an agency or program.</p> <p>18 Q. Understood.</p> <p>19 So we can get into the main</p> <p>20 subjects, can you just help folks</p> <p>21 understand, what is the EDA? You said that</p> <p>22 it was largely a performance audit of the</p> <p>23 EDA policies and procedures with respect to</p> <p>24 tax incentive programs, five of them.</p> <p>25 What's the EDA's role with</p>
<p style="text-align: right;">Page 84</p> <p>1 P. Degnan</p> <p>2 respect to tax incentive programs?</p> <p>3 A. So the -- in this setting, in</p> <p>4 this context, the EDA is the New Jersey</p> <p>5 Economic Development Authority that is</p> <p>6 tasked with running and administering the</p> <p>7 five incentive programs that we looked at,</p> <p>8 the independent agency, the executive</p> <p>9 branch of state government, and have more</p> <p>10 sort of a traditional corporate structure</p> <p>11 than other state agencies have, but I don't</p> <p>12 know that it is necessary or relevant to</p> <p>13 how they administer the programs. It's</p> <p>14 just the way they are set up.</p> <p>15 Q. Would it be fair, in layman's</p> <p>16 terms, to think of the EDA's as the</p> <p>17 watchdog, so to speak, over tax incentive</p> <p>18 programs to make sure that there is</p> <p>19 oversight, compliance by the recipients</p> <p>20 with the requirements of the award?</p> <p>21 A. That is our conclusion. I don't</p> <p>22 think there is statutory language that</p> <p>23 directs them to perform in a watch dog</p> <p>24 function, but certainly in the interest of</p> <p>25 good government, given the fact that</p>	<p style="text-align: right;">Page 85</p> <p>1 P. Degnan</p> <p>2 taxpayer funds are at issue, the amount of</p> <p>3 funds that we are talking about, just the</p> <p>4 general nature of their role and</p> <p>5 responsibilities, it seems to me that that</p> <p>6 would be a fair characterization of part of</p> <p>7 their responsibilities.</p> <p>8 Q. I know that you conducted the</p> <p>9 audit in response to an executive order,</p> <p>10 but why is it important for the</p> <p>11 comptroller's office to perform an audit of</p> <p>12 something like EDA's oversight over tax</p> <p>13 incentives?</p> <p>14 A. Well, obviously, I think all of</p> <p>15 our audits are important, no matter what</p> <p>16 agency or program entity we are looking at.</p> <p>17 Certainly in this case, there was</p> <p>18 a compelling reason to perform this audit</p> <p>19 given the amount of money at issue, the</p> <p>20 fact that taxpayer funds are, you know,</p> <p>21 tangentially implicated by these programs.</p> <p>22 So when we receive an executive</p> <p>23 order from the governor, we evaluate that</p> <p>24 to determine if it is an appropriate</p> <p>25 project for us and then initiate it with</p>

P. Degnan

the scope that we initiated in the time period that seemed to be relevant.

Q. And did you look at every one of EDA's tax incentive programs?

A. We looked at five that are outlined in the report. If there were others, I'm not aware of them. We looked at the two programs that were specified in the executive order which was Grow New Jersey and ERG. And the executive order also suggested we look at predecessor programs, so we included three predecessor programs in our analysis.

Q. Did you look at -- during the course of your audit, did you look at every tax incentive award in the program, or was there some methodology for focusing on some sort of sample size?

A. We created a sample, what I will call a generically selected sample. We didn't want to be in a position where we were looking at every single recipient or awardee over the course of the five programs.

P. Degnan

Q. So roughly, if you know -- if you don't know, let me know. This is not a memory test -- but approximately how many companies in those five programs actually received money? I'm not saying ones that were approved, but didn't receive money. Do you know approximately how many companies received money from those five programs?

A. I can tell you that within what we discussed in the report, we started with a pool of a thousand companies that had been approved, and I forget -- if I misstate any of this, Kevin or somebody can correct me. We started with a thousand companies that were essentially approved.

We wanted to drill down and look at companies that had met their obligations and had received at least one award payment as a result of that approval. So that brought us down to 401 companies or awardees.

And that was the pool from which we selected -- actually, we selected 42

P. Degnan

companies from that or awardees from that pool. EDA provided us with six additional awardees as a result of our request that they, early on in the process, give us some sample files across the five programs. They provided us with six files. We incorporated those in the 42 that we selected, giving us our sample of 48.

Q. That's fair enough. Let me break that down a little bit.

So the six that EDA provided, I'm not asking you who they are, but is that somewhere documented in your files what those six companies were?

A. I'm sure it is. I can't -- I can't say with absolute certainty, but I'm sure that is in the file.

Q. Do you have any --

A. In other words, could we distinguish between the 42 selected and the six that were provided to us?

Q. I'm going to get to the 42 in a second.

A. Yeah, we can actually --

P. Degnan

Q. Do you -- as you sit there right now, do you know why the EDA picked the six companies that it did?

A. I do not.

Q. And the 42 companies, can you give us just a general understanding of why those 42?

A. Sure. So we wanted to get -- and this is what I -- really the definition of a judgmental sample. We wanted to get a representative cross-section of the awardees across the five programs with a varied degree of the amount of the award, size of the program and the geographical location of the program. We just wanted to get a fair cross-section of the awardees in each of the five incentive programs.

Q. I take it that probably happened in the level below you in your organization?

A. Interestingly enough, the -- I'm not an auditor, so a lot of what happens in the audit process is left up to the career employees at the office who are certified

<p style="text-align: right;">Page 90</p> <p>1 P. Degnan</p> <p>2 auditors, in many cases CPAs, and I let</p> <p>3 them do their jobs.</p> <p>4 Q. Of course. And if you don't know</p> <p>5 the answer to this question, it's fine.</p> <p>6 You have just, in case you do, do you know</p> <p>7 whether or not the EDA was consulted or had</p> <p>8 any role or input into the decision of</p> <p>9 selecting those 42 companies?</p> <p>10 A. My understanding is they did not</p> <p>11 have any input in that.</p> <p>12 Q. So was the EDA required to</p> <p>13 cooperate with your audit?</p> <p>14 A. Yes. Our statute requires</p> <p>15 auditees to cooperate with our audit</p> <p>16 function by the documents we request. It</p> <p>17 is something that I wouldn't want to</p> <p>18 personally litigate, not in this case, but</p> <p>19 it has been upheld by courts in New Jersey</p> <p>20 as well.</p> <p>21 Q. Couple of things and then I can</p> <p>22 get to the other topics.</p> <p>23 When you conducted or when your</p> <p>24 staff conducted the audit, were they and</p> <p>25 you aware that about two years prior to the</p>	<p style="text-align: right;">Page 91</p> <p>1 P. Degnan</p> <p>2 completion of your audit, so I'm talking</p> <p>3 now in January of 2017, that the office of</p> <p>4 the state auditor had also done, with a</p> <p>5 different methodology, but had also done an</p> <p>6 auditor report?</p> <p>7 A. Yes. I am aware of that.</p> <p>8 Q. Do you know whether or not they</p> <p>9 factored that report into some of the</p> <p>10 analysis and recommendations that</p> <p>11 ultimately resulted in your report?</p> <p>12 A. No. I mean, the answer is they</p> <p>13 did it not. The report, the auditor's</p> <p>14 report was obviously a data point. It was</p> <p>15 considered by the audit division in the</p> <p>16 preplanning process of our own audit. We</p> <p>17 were well aware of their findings, the</p> <p>18 auditor's findings.</p> <p>19 We also had some information</p> <p>20 about the corrective action plan that the</p> <p>21 EDA had put in place as a result of that</p> <p>22 audit. But we recreated our own scope,</p> <p>23 created our own methodology. We did not</p> <p>24 rely on any of the data or findings that</p> <p>25 the auditor concluded or reported on.</p>
<p style="text-align: right;">Page 92</p> <p>1 P. Degnan</p> <p>2 So it was a piece of information</p> <p>3 that we had, but it was not used as an</p> <p>4 audit tool, I would say.</p> <p>5 Q. Maybe -- let me be more precise</p> <p>6 in my questioning, because I think maybe</p> <p>7 the question I asked you wasn't as clear as</p> <p>8 it could have been.</p> <p>9 What does it say to you as</p> <p>10 comptroller if you are looking at an audit</p> <p>11 and you see that the auditee had a prior</p> <p>12 audit, whether it was your office or</p> <p>13 another office, like office of the auditor,</p> <p>14 there was a corrective action plan, and</p> <p>15 then during your audit, you found that the</p> <p>16 auditee had not complied with the prior</p> <p>17 corrective action plan? What does that say</p> <p>18 about the strength of the internal controls</p> <p>19 of the organization that you can draw a</p> <p>20 conclusion based on that scenario?</p> <p>21 A. I'm not -- I'm either not</p> <p>22 understanding your question or not sure I</p> <p>23 can answer that question.</p> <p>24 We certainly commented in the</p> <p>25 report that we believed there were aspects</p>	<p style="text-align: right;">Page 93</p> <p>1 P. Degnan</p> <p>2 of the corrective action plan that may not</p> <p>3 have gone far enough. But I'm not sure</p> <p>4 what I would say beyond that.</p> <p>5 Q. So I guess, I don't want to spend</p> <p>6 too much time on it. If this is not clear</p> <p>7 enough, I will move on.</p> <p>8 Does it say anything about the</p> <p>9 internal control structure of an</p> <p>10 organization if you find that, over the</p> <p>11 course of multiple audits, there is not</p> <p>12 action taken to correct the problems that</p> <p>13 were identified in prior audits?</p> <p>14 A. If you are asking me for a value</p> <p>15 judgment as to how good they are, that's</p> <p>16 not something I can provide. We made the</p> <p>17 findings we made in the report, and I think</p> <p>18 I will confine myself to that.</p> <p>19 Q. Turning now back to your audit,</p> <p>20 just so we are clear about what's happening</p> <p>21 now, and I'll get back to this later. Is</p> <p>22 EDA doing anything right now about the</p> <p>23 conclusions of your audit?</p> <p>24 A. They noted in their -- they.</p> <p>25 It's response to our draft -- in our</p>



<p style="text-align: right;">Page 94</p> <p>1 P. Degnan</p> <p>2 process, the auditee is entitled to see a</p> <p>3 draft or discussion draft of the audit</p> <p>4 before it is released to the public, and</p> <p>5 they are allowed to respond to findings if</p> <p>6 they wish. We evaluate those responses and</p> <p>7 include them where necessary.</p> <p>8 So in the EDA's response to the</p> <p>9 audit, there were certain things that they</p> <p>10 pointed out that they hadn't been doing.</p> <p>11 Some of them were directly in response to</p> <p>12 the findings that we had previewed for</p> <p>13 them. Some were in response to the state</p> <p>14 auditor's report.</p> <p>15 What they have been doing since</p> <p>16 the audit is -- since our audit process was</p> <p>17 concluded, at least this stage of the audit</p> <p>18 process was concluded, I couldn't tell you.</p> <p>19 But I expect in the next couple of weeks</p> <p>20 you will be getting a formal corrective</p> <p>21 action plan from them, so I will have a</p> <p>22 better sense of what their forward-looking</p> <p>23 approach is going to be.</p> <p>24 Q. Thank you.</p> <p>25 After that corrective action plan</p>	<p style="text-align: right;">Page 95</p> <p>1 P. Degnan</p> <p>2 we may have you, ask you back for another</p> <p>3 hearing, but we will put it to the side for</p> <p>4 now.</p> <p>5 Let me ask you a specific</p> <p>6 question, which is, is it fair to say that</p> <p>7 during the course of an audit and this is</p> <p>8 something I think we spoke about a little</p> <p>9 bit earlier, during the course of the</p> <p>10 audit, your team works relatively closely</p> <p>11 with whatever the audited -- the auditee</p> <p>12 agency is to gather the information,</p> <p>13 understand that information, request</p> <p>14 follow-up information and the like?</p> <p>15 A. Yes. It varies from project to</p> <p>16 project, how closely we work with them.</p> <p>17 This is not intended or designed to be an</p> <p>18 adversarial process. We are all just</p> <p>19 hoping that we can achieve a smooth</p> <p>20 exchange of information with the auditee.</p> <p>21 In this case, I will say to you</p> <p>22 that, given the scope of the audit, we did</p> <p>23 work very closely with EDA throughout the</p> <p>24 course of the 50 weeks or so that the audit</p> <p>25 process ran. So in this case, we did work</p>
<p style="text-align: right;">Page 96</p> <p>1 P. Degnan</p> <p>2 closely with EDA.</p> <p>3 Q. Now, during a performance audit,</p> <p>4 is it part of your policies or is it a</p> <p>5 practice for your audit team to ask the</p> <p>6 auditee agency whether or not there is any</p> <p>7 litigation that has been filed within a</p> <p>8 certain time frame that might be relevant</p> <p>9 to the subject of the audit?</p> <p>10 A. Yes. I apologize. I gave all my</p> <p>11 copies of the pamphlet away, but our</p> <p>12 opening conference, that's a box that we</p> <p>13 check during our opening conference in the</p> <p>14 audit. We ask the question as to whether</p> <p>15 or not there is any pending litigation or</p> <p>16 adverse information that we need to be</p> <p>17 aware of.</p> <p>18 Q. Do you see that I put a binder in</p> <p>19 front of you? You don't see that binder?</p> <p>20 A. I do now.</p> <p>21 Q. There is a binder.</p> <p>22 So I thank -- I will get to it in</p> <p>23 a second, but just so you understand what</p> <p>24 is in the binder, tab 1 is findings, tab 2</p> <p>25 has your report, tab 3 has the state</p>	<p style="text-align: right;">Page 97</p> <p>1 P. Degnan</p> <p>2 auditor's report, tab 4 has the New Jersey</p> <p>3 EDA response to your report that was filed</p> <p>4 on January 3 of 2019, tab 5 has the</p> <p>5 pamphlet that you were just referring to,</p> <p>6 and tab 6 has something that I believe is</p> <p>7 called a management representation letter.</p> <p>8 A. Yes, I believe we provided that</p> <p>9 to you the other day.</p> <p>10 Q. Yes, thank you.</p> <p>11 OK. So if this is part of the</p> <p>12 process, can you kind of help the public</p> <p>13 understand why that question is -- why is</p> <p>14 it asked and why is it important?</p> <p>15 A. You know, I think as a general</p> <p>16 practice, for one thing, you always want to</p> <p>17 have more information than less, I think it</p> <p>18 is a good catch-all question at the first</p> <p>19 stage of the audit process is gathering as</p> <p>20 much information as possible to inform the</p> <p>21 scope, what the scope of the audit will</p> <p>22 ultimately be.</p> <p>23 So it's a question that -- again,</p> <p>24 I'm not an auditor, so I'm giving you my</p> <p>25 general impression of this. It's designed</p>

1 P. Degnan  
2 to elicit information that might  
3 potentially lead to an issue that you would  
4 want to look at in a performance audit.  
5 It's fertile ground for leads.

6 Q. And so if you are advised of any  
7 litigation that has something to do with  
8 the subject matter you're auditing, is it  
9 fair to say that it could impact the scope  
10 of the audit or what kind of other  
11 information is asked for?

12 A. It could. And it could not. It  
13 depends.

14 Q. So I'm going to try to streamline  
15 this a little bit.

16 Is it fair to say that over the  
17 course of time, your staff asked EDA a  
18 number of questions, including the question  
19 about whether or not there had been  
20 litigation?

21 A. I know that that came up during  
22 the opening conference. I can't tell you  
23 whether it was asked again, how many times  
24 it was asked again. So I -- you know,  
25 beyond the opening conference, I don't have

1 P. Degnan  
2 any specific information about it.

3 Q. As you sit here now -- and again,  
4 this isn't a memory test -- do you know  
5 what the date of the opening conference  
6 was?

7 A. I do not.

8 Q. Do you know what answer the EDA  
9 provided to the question of, "Is there any  
10 relevant litigation?"

11 A. My understanding is they didn't  
12 provide a substantive answer at that point.  
13 There was a response that was designed to  
14 better understand the scope of the request.  
15 In other words, we are not really  
16 interested in whether or not there was a  
17 slip and fall at EDA's facility that  
18 resulted in a lawsuit. We were able to  
19 narrow the scope of the question for them  
20 in the sense that we were only interested  
21 in litigation that touched on five programs  
22 that we audited.

23 Q. Again, if you don't know, please  
24 don't answer. Do you know whether or not  
25 EDA, at that first meeting or thereafter,

1 P. Degnan  
2 advised anyone from your staff whether or  
3 not there is pending litigation that  
4 concerned the tax incentive programs at  
5 issue in your audit?

6 A. Based on the information I have  
7 right now, we did not receive that  
8 information.

9 Q. So help us understand then how  
10 this all culminates, whatever important  
11 representations that are made during the  
12 course of the audit, what is the normal  
13 process for documenting and memorializing  
14 that at the completion of the audit?

15 A. Right, so that's the management  
16 representation letter you referenced  
17 earlier. At the conclusion of the audit,  
18 just to wrap things up, essentially, we,  
19 the comptroller's office, drafts language  
20 designed to capture our understanding of  
21 the representations that have been made to  
22 us throughout the audit process. This is a  
23 standard part of the audit process.

24 We send that language to the  
25 auditee. If they agree with that language,

1 P. Degnan  
2 they put it on their letterhead, sign it,  
3 their representatives, the auditee, signs  
4 it and sends it back to us. And like I  
5 said, it goes in the file.

6 Q. So is it fair to say that that  
7 letter essentially memorializes the various  
8 representations and warranties that were  
9 made during -- to the audit team during the  
10 course of the audit?

11 A. That's the intent of the letter  
12 as I understand it.

13 Q. I would like to turn your  
14 attention to tab 6 of your binder, please.

15 Mr. Comptroller, let me just stop  
16 you one second and say it's very, very  
17 important to us to not engage in the  
18 practice of publicly shaming people. I'm  
19 going to ask you to not name the signatory  
20 of this letter, that we will have a process  
21 for that after we get all the facts because  
22 we are at the very beginning, and there  
23 could be a completely innocent explanation  
24 to what we are about to learn.

25 I just want to make one thing

<p style="text-align: right;">Page 102</p> <p>1 P. Degnan</p> <p>2 clear. Could you look at the signatory on</p> <p>3 the second page. Is it fair to say that</p> <p>4 that's not the CEO, that that individual</p> <p>5 who is named is not the CEO of the EDA, Jim</p> <p>6 Sullivan?</p> <p>7 A. That is not Jim Sullivan.</p> <p>8 Q. Thank you.</p> <p>9 So can you just go back to the</p> <p>10 first page and tell us the date of the</p> <p>11 letter.</p> <p>12 A. January 3, 2019.</p> <p>13 Q. And this is a signed letter, so</p> <p>14 this represents the final?</p> <p>15 A. The signed letter on the EDA</p> <p>16 letterhead.</p> <p>17 Q. Sir, just so that we understand</p> <p>18 the introduction to the letter, can you</p> <p>19 just please read into the letter the top</p> <p>20 highlighted portion of page 1?</p> <p>21 A. Let me put on my glasses.</p> <p>22 Q. I'm taking them on and off</p> <p>23 myself, so I sympathize.</p> <p>24 A. "In connection with your audit</p> <p>25 with the New Jersey Economic Authority as</p>	<p style="text-align: right;">Page 103</p> <p>1 P. Degnan</p> <p>2 of January 3, 2019, and for the period of</p> <p>3 January 1, 2010, to January 3, 2019, we</p> <p>4 confirmed to the best of our knowledge and</p> <p>5 belief the following representations made</p> <p>6 to you during your review."</p> <p>7 Q. Sir, again, just to break it down</p> <p>8 for me, this is the EDA saying essentially,</p> <p>9 "We have already told you these things, all</p> <p>10 relevant to the period between 2010 and</p> <p>11 2019, and now we are memorializing them</p> <p>12 here."</p> <p>13 Is that a fair summary of that</p> <p>14 paragraph?</p> <p>15 A. It is a fair summary.</p> <p>16 Q. So could you please go down to</p> <p>17 the bullet that is number 5 -- it should be</p> <p>18 highlighted on your copy -- and please read</p> <p>19 that bullet into the record.</p> <p>20 A. "We have no knowledge of any</p> <p>21 fraud or suspected fraud affecting the</p> <p>22 entity, involving management, employees who</p> <p>23 have significant roles in internal control</p> <p>24 or others where the fraud could have a</p> <p>25 material effect on the financial records or</p>
<p style="text-align: right;">Page 104</p> <p>1 P. Degnan</p> <p>2 financial system."</p> <p>3 And then a second bullet,</p> <p>4 "Allegations of fraud or suspected fraud</p> <p>5 affecting the entity received in</p> <p>6 communications from employees, former</p> <p>7 employees, analysts, regulators or others."</p> <p>8 Q. Now, that second paragraph, is</p> <p>9 that also under the "we have no knowledge</p> <p>10 of any"?</p> <p>11 A. Yes.</p> <p>12 Q. So, in other words,</p> <p>13 representation is we have no knowledge of</p> <p>14 any allegations of fraud or suspected</p> <p>15 fraud, et cetera?</p> <p>16 A. Yes.</p> <p>17 Q. And then if you could finally</p> <p>18 just read the last one, number 8.</p> <p>19 A. Number 8, "We have disclosed all</p> <p>20 details concerning any pending claims,</p> <p>21 assessments and litigation against us of</p> <p>22 which we are aware and which would have a</p> <p>23 significant effect on financial</p> <p>24 operations."</p> <p>25 Q. So just to be clear, if there had</p>	<p style="text-align: right;">Page 105</p> <p>1 P. Degnan</p> <p>2 been a lawsuit filed in 2015 that was</p> <p>3 active at the time of the audit that had to</p> <p>4 do with tax incentive programs, would it</p> <p>5 have actually been responsive to the</p> <p>6 staff's requests and, therefore, relevant</p> <p>7 to the representation letter filed on</p> <p>8 January of 2019, January 3 of 2019?</p> <p>9 A. I would say that I would have</p> <p>10 expected that that would have been</p> <p>11 disclosed. I don't know what EDA's</p> <p>12 understanding of or reading of the language</p> <p>13 of this letter required or would have</p> <p>14 compelled them to do.</p> <p>15 Q. Again, I just want to state so</p> <p>16 the record is abundantly clear on this, I</p> <p>17 agree with you wholeheartedly that that is</p> <p>18 not a question for you. And I confirm with</p> <p>19 you wholeheartedly that we are at the</p> <p>20 beginning of the investigation, and we want</p> <p>21 to be fair to everyone.</p> <p>22 And part of this process is</p> <p>23 getting the information out there and then</p> <p>24 testing it, and we are not at the testing</p> <p>25 stage yet.</p>

<p style="text-align: right;">Page 106</p> <p>1 P. Degnan</p> <p>2 I'm really just asking about</p> <p>3 your -- you're the chief guy here, and so</p> <p>4 I'm asking you, in this language, if there</p> <p>5 had been a lawsuit filed in 2015 that</p> <p>6 actually alleged fraud at the EDA with</p> <p>7 respect to the programs that you were</p> <p>8 auditing, would you have wanted to know</p> <p>9 about it?</p> <p>10 A. I would have wanted to know about</p> <p>11 it.</p> <p>12 Q. So in the front of your binder,</p> <p>13 there is a filed complaint, and I'm going</p> <p>14 to ask you about that now. And then we are</p> <p>15 going to move on.</p> <p>16 You should see at the center of</p> <p>17 the top, there is a stamped date by the</p> <p>18 court. Can you read that into the record?</p> <p>19 A. The highlighted date here?</p> <p>20 Received date?</p> <p>21 Q. Yeah.</p> <p>22 A. May 11, 2015.</p> <p>23 Q. And do you see that it is a legal</p> <p>24 complaint?</p> <p>25 A. That's what it appears to be.</p>	<p style="text-align: right;">Page 107</p> <p>1 P. Degnan</p> <p>2 Q. And does it say in the first</p> <p>3 paragraph -- I'm just going to try to</p> <p>4 streamline this -- "Plaintiff was formerly</p> <p>5 employed by defendant New Jersey Economic</p> <p>6 Development Authority."</p> <p>7 Do you see that in paragraph 1?</p> <p>8 A. Yes. Yup.</p> <p>9 Q. And then again, just to save time</p> <p>10 since you don't have the result, I'm just</p> <p>11 going to read a couple of paragraphs of</p> <p>12 this into the record so it is clear. If</p> <p>13 you want to follow along, start at</p> <p>14 paragraph 14 on page 3.</p> <p>15 A. It says as follows: "Applicants</p> <p>16 seeking funding for tax incentives to</p> <p>17 locate some or all of its business in New</p> <p>18 Jersey, instead of another state, were also</p> <p>19 required to provide data to the EDA that</p> <p>20 was used to calculate the net economic</p> <p>21 benefit such relocation would bring to New</p> <p>22 Jersey. When the analysis showed little or</p> <p>23 no net economic benefit to New Jersey, EDA</p> <p>24 executive number 1 would ask plaintiff to</p> <p>25 change the inputs to the calculation to</p>
<p style="text-align: right;">Page 108</p> <p>1 P. Degnan</p> <p>2 make it show such a benefit. Plaintiff</p> <p>3 refused to take such improper action. So</p> <p>4 EDA executive number 1 would do so himself.</p> <p>5 "Another requirement of this</p> <p>6 program was that the applicant had to show</p> <p>7 that the competing out-of-state location</p> <p>8 was legitimate and comparable to the</p> <p>9 proposed New Jersey site. On a couple of</p> <p>10 occasions, plaintiff notified EDA executive</p> <p>11 number 1 that the competing out-of-state</p> <p>12 locations were simply not real. But EDA</p> <p>13 executive number 1 did not want to know</p> <p>14 about it, and they were approved anyway.</p> <p>15 "Plaintiff complained about these</p> <p>16 phantom location to EDA executives number 2</p> <p>17 and 3 and other executives who attended</p> <p>18 meetings when these applications were</p> <p>19 discussed. EDA executive number 1 also</p> <p>20 qualified many film production companies</p> <p>21 for tax credits even though they did not</p> <p>22 meet the requirements that 60 percent of</p> <p>23 their production costs had to be spent in</p> <p>24 New Jersey. When plaintiff complained, EDA</p> <p>25 executive number 1 became very angry and</p>	<p style="text-align: right;">Page 109</p> <p>1 P. Degnan</p> <p>2 yelled, 'You don't know anything.'"</p> <p>3 There are several other similar</p> <p>4 allegations of the conduct that's described</p> <p>5 in this complaint, but in light of that</p> <p>6 information, again, let me ask the</p> <p>7 question, would you have wanted to know</p> <p>8 about this complaint at the time of the</p> <p>9 audit?</p> <p>10 I mean, again, as a general</p> <p>11 matter, I would always want to know more</p> <p>12 rather than less, so I would never say no</p> <p>13 to hearing about something, but I don't</p> <p>14 really know anything about this complaint.</p> <p>15 I don't know how it got resolved. These</p> <p>16 are obviously, as you know, just</p> <p>17 allegations. But as a general matter, I --</p> <p>18 sure, I would want to know that.</p> <p>19 Q. Would your answer change if you</p> <p>20 knew, for example, that there were</p> <p>21 depositions in this matter going on during</p> <p>22 the course of your audit?</p> <p>23 A. Would my answer change? No.</p> <p>24 Q. That wouldn't change whether you</p> <p>25 would -- if litigation hadn't been</p>

<p style="text-align: right;">Page 110</p> <p>1 P. Degnan</p> <p>2 resolved, it wasn't 20 years old, if it was</p> <p>3 directly relevant, again, would you expect</p> <p>4 that that would be disclosed to you?</p> <p>5 A. I would have to think about it a</p> <p>6 little bit and know more. If the question</p> <p>7 is, are you aware of allegations that</p> <p>8 suggest, whether they were substantiated or</p> <p>9 not, they might have had an obligation to</p> <p>10 tell us about allegations.</p> <p>11 So I would just have to know more</p> <p>12 before I can answer that question.</p> <p>13 Q. Let me then get to your audit</p> <p>14 plans, if you don't mind.</p> <p>15 Can you turn to the audit report</p> <p>16 which, again, you may have your own copy</p> <p>17 that you are working from. But it is in</p> <p>18 tab 2 of the binder.</p> <p>19 Here, please forgive me if this</p> <p>20 is in any way annoying, but I'm really</p> <p>21 going to try to break down, again, what you</p> <p>22 said, not in terms of what's behind it, but</p> <p>23 what it means and why it's important.</p> <p>24 Those are basically going to be the two</p> <p>25 questions I ask through a lot of this.</p>	<p style="text-align: right;">Page 111</p> <p>1 P. Degnan</p> <p>2 So first of all, as a general</p> <p>3 matter, are you confident in the</p> <p>4 conclusions that you or your team drew in</p> <p>5 the report?</p> <p>6 A. I am.</p> <p>7 Q. And as we discussed, you are</p> <p>8 aware that the EDA has responded with a</p> <p>9 letter that takes issue with some of your</p> <p>10 conclusions?</p> <p>11 A. I'm aware of that, yes.</p> <p>12 Q. Have you reviewed EDA's response</p> <p>13 to your audit?</p> <p>14 A. Yes.</p> <p>15 Q. So if you would, would you turn</p> <p>16 to -- again, in the binder that we have</p> <p>17 tried to flag everything for you to make</p> <p>18 this as efficient as possible, but if you</p> <p>19 turn in tab 2 to flag number 1, and if you</p> <p>20 read the highlighted language that</p> <p>21 summarizes the audit results and then kind</p> <p>22 of, once you give that summary, then rather</p> <p>23 than breaking down the whole thing, which</p> <p>24 would probably take about four days, and</p> <p>25 because it is complicated, I'm going to</p>
<p style="text-align: right;">Page 112</p> <p>1 P. Degnan</p> <p>2 focus on just some component parts of the</p> <p>3 report.</p> <p>4 A. OK. So this is the "specifically</p> <p>5 our audit found" paragraph?</p> <p>6 Q. Correct, paragraphs A through F.</p> <p>7 A. I'll start with the lead-in,</p> <p>8 "Specifically our audit found numerous</p> <p>9 inefficiencies in EDA's management and</p> <p>10 oversight of the incentive programs. These</p> <p>11 deficiencies include, A, inadequate</p> <p>12 monitoring, insufficient oversight and</p> <p>13 nonexistent policies and procedures that</p> <p>14 have created controlled deficiencies that</p> <p>15 weaken the transparency and accountability</p> <p>16 of the incentive programs and their</p> <p>17 success.</p> <p>18 "B, the lack of an adequate</p> <p>19 process to assess accomplishments and</p> <p>20 effectiveness of the incentive programs or</p> <p>21 to determine whether the state realized the</p> <p>22 economic benefits asserted by the</p> <p>23 applicants.</p> <p>24 "C, the lack of policies and</p> <p>25 procedures to monitor awardees'</p>	<p style="text-align: right;">Page 113</p> <p>1 P. Degnan</p> <p>2 performance, i.e., number of jobs created,</p> <p>3 et cetera, and insufficient documentation</p> <p>4 requirements for awardees to report</p> <p>5 specific accomplishments of their</p> <p>6 performance results. These failures</p> <p>7 resulted in inaccurate representations of</p> <p>8 awardee performance to the stakeholders and</p> <p>9 taxpayers.</p> <p>10 "D, a failure to properly analyze</p> <p>11 recipient performance data to determine</p> <p>12 whether the incented jobs were actually</p> <p>13 created or retained pursuant to the award</p> <p>14 terms. These actions resulted in 2,993</p> <p>15 reported jobs that were not substantiated</p> <p>16 as having been created or retained.</p> <p>17 "E, a failure to assess and</p> <p>18 collect appropriate fees from all</p> <p>19 applicants and recipients.</p> <p>20 "F, inadequate accounting</p> <p>21 processes and lack of appropriate controls</p> <p>22 to ensure that the fees were recorded</p> <p>23 pursuant to generally accepted accounting</p> <p>24 principles. GAAP."</p> <p>25 Q. Thanks for that. Sorry to make</p>

<p style="text-align: right;">Page 114</p> <p>1 P. Degnan</p> <p>2 you read so much. I'm not going to ask you</p> <p>3 too many questions about the last two</p> <p>4 conclusions today, but I do want to ask you</p> <p>5 one question.</p> <p>6 As part of the scope of the</p> <p>7 audit, did you look at why the EDA</p> <p>8 collected fees from some people and not</p> <p>9 from others?</p> <p>10 A. I'm not sure we got into the why</p> <p>11 of that question. So I'm -- I would have</p> <p>12 to look at the report again, and I didn't</p> <p>13 really focus on that before today because I</p> <p>14 didn't know we were getting into that.</p> <p>15 Q. That was a question I added, so</p> <p>16 sorry about that. I was just curious.</p> <p>17 So I want to first discuss the</p> <p>18 report's findings about EDA's lack of</p> <p>19 policies and procedures and internal</p> <p>20 controls for their incentive programs. So,</p> <p>21 again, just kind of breaking it down a</p> <p>22 little bit more and I'll get to the, what</p> <p>23 does it mean and why.</p> <p>24 Can you turn to the second flag</p> <p>25 in the report which is on page 11.</p>	<p style="text-align: right;">Page 115</p> <p>1 P. Degnan</p> <p>2 Would you mind reading the</p> <p>3 highlighted portion into the record?</p> <p>4 A. Right, this is the header of this</p> <p>5 section, starts on page 11.</p> <p>6 It's, "EDA lacks appropriate</p> <p>7 policies, procedures and controls for</p> <p>8 certain administrative actions required to</p> <p>9 ensure that final approved products meet</p> <p>10 statutory requirements and objectives of</p> <p>11 the incentive programs. In addition, EDA</p> <p>12 failed to comply with statutes,</p> <p>13 regulations, its own policies or procedures</p> <p>14 and award agreement terms which resulted in</p> <p>15 overstatement and overpayment" -- I'm</p> <p>16 sorry, "which resulted in overstated and</p> <p>17 overpaid incentive awards."</p> <p>18 Q. So I want to break that down a</p> <p>19 little bit just so that we all understand.</p> <p>20 Is it fair to summarize that there is --</p> <p>21 there are basically two problems you</p> <p>22 highlight here.</p> <p>23 One is a lack of policies, and</p> <p>24 then one is a failure to follow the rules,</p> <p>25 whether those rules are in existing</p>
<p style="text-align: right;">Page 116</p> <p>1 P. Degnan</p> <p>2 policies, statutes or other places.</p> <p>3 A. That's fair.</p> <p>4 Q. Now, I apologize if this is an</p> <p>5 obvious question to you, but it may not be</p> <p>6 obvious to everyone else, so I really want</p> <p>7 people to understand this. You looked at</p> <p>8 the EDA, you have got 20 people basically</p> <p>9 doing the same thing, right? They are all</p> <p>10 engaging in discussions with program</p> <p>11 recipients and they are gathering</p> <p>12 information.</p> <p>13 Just as a general matter, why is</p> <p>14 it important to have policies?</p> <p>15 A. You know, policies --</p> <p>16 well-defined written available policies</p> <p>17 provide a consistent method of operation</p> <p>18 for the folks that are responsible for</p> <p>19 doing the job.</p> <p>20 Q. And to the extent that their job</p> <p>21 is complicated, is it essentially fair to</p> <p>22 look at policies as kind of like a</p> <p>23 checklist of everything that you have to do</p> <p>24 to make sure that there is a process</p> <p>25 discipline as different people are going</p>	<p style="text-align: right;">Page 117</p> <p>1 P. Degnan</p> <p>2 out into the world doing essentially the</p> <p>3 same process? Is that a fair layman's</p> <p>4 description?</p> <p>5 A. It certainly could be structured</p> <p>6 that way.</p> <p>7 Q. So when we talk about policies,</p> <p>8 what we are really talking about are rules</p> <p>9 of the road to help people understand how</p> <p>10 to do their job?</p> <p>11 A. I can accept that.</p> <p>12 Q. And again, the importance here</p> <p>13 is, if the job is in part making sure that</p> <p>14 people qualify for tax incentive programs</p> <p>15 in good faith and that they are compliant</p> <p>16 with their obligations, if there aren't</p> <p>17 clear policies, as you point out in the</p> <p>18 report, there is the real threat of</p> <p>19 overpayments and improper payments. Is</p> <p>20 that fair?</p> <p>21 A. I think it's fair to say that</p> <p>22 that was our conclusion here.</p> <p>23 Q. So I want to get into one example</p> <p>24 of that. I don't want to belabor the</p> <p>25 record with 100 examples, but there is a</p>

<p style="text-align: right;">Page 118</p> <p>1 P. Degnan 2 couple of key things that I think are 3 important for people to understand. 4 So to introduce this topic, if 5 you would go again on page 12, this is flag 6 3, there is some highlighted text in there 7 and I would like you to read it into the 8 record and then I have some follow-up 9 questions. 10 A. OK. So this is a, from a list of 11 findings that we contend support our 12 conclusion. "This conclusion is based on 13 our finding that EDA did not, A, have in 14 place the policy setting forth the process 15 for establishing an adequate baseline in 16 employment numbers at the time of 17 application, i.e. pre-award stage for all 18 programs." 19 Q. This finding, this deficiency, 20 applies to those programs where either 21 creating or retaining a job is part of the 22 program requirements? 23 A. Yes. 24 Q. And again, just to be as 25 simplistic as possible, some of these</p>	<p style="text-align: right;">Page 119</p> <p>1 P. Degnan 2 programs, not all of them, but some of 3 these programs are essentially a trade-off. 4 We will give you tax incentives, as long as 5 you keep or create new jobs, is that a fair 6 statement? 7 A. It's enormously more complicated 8 than that, but as a general proposition, 9 some of the programs operate that way. 10 Q. Thank you. I mean, in addition 11 there are other programs, but Grow New 12 Jersey works that way at a high level, and 13 BEIP works that way at a high level, 14 correct? 15 A. I believe that's right. 16 Q. So can you just help the public 17 understand very fundamentally, why is it 18 important at the beginning of the 19 application process to establish an 20 applicant's baseline employment numbers? 21 A. It's the same reason you take the 22 kids to get a baseline concussion test 23 before they play sports. You want to have 24 a starting point so that you can assess any 25 changes that occur with time.</p>
<p style="text-align: right;">Page 120</p> <p>1 P. Degnan 2 Q. Great metaphor. 3 A. Feel free to use it. 4 Q. Thank you. 5 So really, eventually, what you 6 are going to be measuring is either the 7 jobs that they are retaining, you would 8 want to identify the at-risk jobs, is that 9 right? 10 A. The award -- the applicants have 11 to identify the number of at-risk jobs. 12 Q. And again, we are going to talk 13 about this in some detail later on. The 14 applicants have to provide that, and is it 15 also fair that it's incumbent upon the 16 agency to do more than just accept the data 17 and make sure that they verify the data? 18 A. Yeah, I mean, that's a fair 19 characterization of probably the largest 20 finding across the board here, is that 21 we -- we are critical of EDA's reliance on 22 recipient-reported data, and we believe 23 that there is more that can and should be 24 done to verify whether or not that data is 25 accurate.</p>	<p style="text-align: right;">Page 121</p> <p>1 P. Degnan 2 Q. And we will get into some more 3 examples of that, but I was giving the 4 example of at-risk jobs being retained. 5 But on the other side of the coin, when 6 someone is growing a job, if you are going 7 to monitor their compliance, you have to 8 know the baseline so that you can 9 understand that they are, in fact, keeping 10 the additional jobs that they agreed to as 11 part of the program requirements. Is that 12 a fair summary? 13 A. Yeah, I think the baseline is 14 important whether it is a retained job or a 15 created job. 16 Q. So again, this may be an obvious 17 question, but why is the lack of a policy 18 around the baseline award, why is that a 19 problem? 20 A. If you don't have a starting 21 point, you have nothing to measure 22 performance against. 23 Q. And if there is not a -- and the 24 policy is -- how does the policy interact 25 with knowing what the baseline? Help</p>

<p style="text-align: right;">Page 122</p> <p>1 P. Degnan 2 people that don't understand the way 3 policies work, understand as someone from 4 EDA sitting there trying to do his or her 5 job, what the lack of a policy means across 6 that department that's responsible for 7 monitoring. 8 A. You know, if the practice of 9 getting the baseline numbers is not 10 administered across the board with all 11 applicants, then you have incomplete files, 12 you have some files with good data points, 13 some files without. And you can't then do 14 a comprehensive check of performance at a 15 later time. At least you can't do a full 16 check. 17 Q. Is it also a danger that, if 18 there is no policy, that people are going 19 to be doing it inconsistently and 20 potentially verifying in different ways 21 with different results, over the course of 22 their -- the applications that they are 23 reviewing? 24 A. There is certainly that 25 potential. Although, look, we know that</p>	<p style="text-align: right;">Page 123</p> <p>1 P. Degnan 2 even if there are policies, there is always 3 a risk that that's happening as well. But 4 the clear written policy that provides 5 guidance to employees to have to do their 6 jobs probably limits those instances where 7 someone might deviate from best practices. 8 Q. So it is obviously not your job 9 as the comptroller to tell them what their 10 policies should be. Is that a fair 11 statement? 12 A. Yes. 13 Q. It's incumbent upon them to have 14 the policies and enforce the policies and 15 to audit to make sure that people are 16 following the policies? 17 A. Right. We identify the problem, 18 we identify a place where, for example, in 19 this instance, where a more robust policy 20 is warranted. It's up to the auditee then 21 to decide how to implement that 22 representation. 23 Q. So I asked you earlier about the 24 state auditor report. I would like to tie 25 this issue back to the state auditor report</p>
<p style="text-align: right;">Page 124</p> <p>1 P. Degnan 2 if I can. 3 It's at tab 3 of your binder. 4 And you will see that, hopefully helpfully, 5 we tabbed it as flag number 1. Would you 6 please just read the highlighted 7 information into the record. 8 A. Yes. Just to be clear, this is 9 the state auditor's report, not my office's 10 report. 11 Q. Understood. 12 A. So it's page 4 of the state 13 auditor's report. The highlighted language 14 is, "Procedures need to be implemented to 15 verify the existence of at-risk jobs prior 16 to grant approval." 17 Q. So, again, this was about two 18 years before you completed your report. 19 Was this essentially the same or a similar 20 finding as the finding that you came to two 21 years later? 22 A. It certainly appears to be, 23 although I'll say I don't know much about 24 the testing process, what's behind the 25 words here, but the language certainly</p>	<p style="text-align: right;">Page 125</p> <p>1 P. Degnan 2 appears to be similar. 3 Q. Now, one general question, the 4 finding that you made about the baseline 5 numbers, was that limited to one program 6 that was a jobs retention program, or was 7 that across all of the job retention 8 programs that your office reviewed? 9 A. I don't know that I have an 10 answer for you on that right now. That's 11 something I think I can probably check on 12 and get back to you. 13 Q. OK, that would be great. 14 So I want to just -- I'm not 15 going to do this much. But I want to go to 16 EDA response and just talk about that a 17 little bit. 18 It's at tab 4 of your binder. 19 While you're getting there, I would just 20 ask a question: I assume over the course 21 of your tenure you've conducted many, many, 22 many audits? 23 A. Yeah. I wouldn't say I conducted 24 them, again, because I'm not an auditor. 25 But I have presided over them, I guess, and</p>



<p style="text-align: right;">Page 126</p> <p>1 P. Degnan</p> <p>2 my name, for better or worse, goes on the</p> <p>3 cover.</p> <p>4 Q. So I would just, out of -- so</p> <p>5 that we understand, is this the -- this</p> <p>6 letter that you have in front of you, do</p> <p>7 you see it?</p> <p>8 A. I do.</p> <p>9 Q. Will you identify it for the</p> <p>10 record, please?</p> <p>11 A. This is the January 3, 2019</p> <p>12 letter from EDA to me in response to the</p> <p>13 discussion here.</p> <p>14 Q. And this one, is it fair to say</p> <p>15 that this one actually was signed by the</p> <p>16 then -- the now EDA CEO Tim Sullivan?</p> <p>17 A. Yes.</p> <p>18 Q. Is this kind of response to an</p> <p>19 audit a common thing?</p> <p>20 A. Every auditee has the opportunity</p> <p>21 to respond like this. Auditees respond in</p> <p>22 various different ways to our audits.</p> <p>23 So this was a thoughtful,</p> <p>24 comprehensive response that agreed with</p> <p>25 some of our findings, took issues with</p>	<p style="text-align: right;">Page 127</p> <p>1 P. Degnan</p> <p>2 others. So from that standpoint, it wasn't</p> <p>3 dramatically different from what we get in</p> <p>4 every audit.</p> <p>5 Q. Sir, can I just ask you to turn</p> <p>6 to page 5. And this, I think, unless I'm</p> <p>7 misunderstanding something, is the EDA's</p> <p>8 response to the baseline jobs policy being</p> <p>9 lacking. And there is some highlighted</p> <p>10 language there. And if you don't mind,</p> <p>11 it's a little bit long, but I'd ask you to</p> <p>12 read that into the record.</p> <p>13 A. Can I read the entire thing? I</p> <p>14 don't want to leave out the beginning of</p> <p>15 the sentence.</p> <p>16 Q. Comptroller, you can do whatever</p> <p>17 you want.</p> <p>18 A. "As part of this continual</p> <p>19 evolution to assist in understanding the</p> <p>20 baseline jobs for the company, the NJ EDA</p> <p>21 began collecting employee information</p> <p>22 worksheets for all new Grow New Jersey</p> <p>23 businesses in mid 2017 to establish</p> <p>24 baseline employment which then is reviewed</p> <p>25 as the business certifies their employment</p>
<p style="text-align: right;">Page 128</p> <p>1 P. Degnan</p> <p>2 numbers at completion of the project. This</p> <p>3 was a result the recommendations of the</p> <p>4 office of the state auditor. The</p> <p>5 requirement's baseline information</p> <p>6 supplements NJ EDA's current policy of</p> <p>7 requiring hiring dates for each employee."</p> <p>8 Q. Then, sir, let me just ask you</p> <p>9 something, a couple of questions. First of</p> <p>10 all, do you know whether or not EDA ever</p> <p>11 specified when within 2017 it actually</p> <p>12 started using these worksheets?</p> <p>13 A. That's the only information I</p> <p>14 have, when we start, mid 2017.</p> <p>15 Q. Did you understand the statement</p> <p>16 in EDA's letters to be that they started</p> <p>17 using these worksheets across all new</p> <p>18 applications starting in whatever that mid</p> <p>19 point was in 2017?</p> <p>20 A. It appears they started using</p> <p>21 them for all new Grow New Jersey</p> <p>22 applications for '17. That's what it</p> <p>23 appears to be.</p> <p>24 Q. So before I move on to the next</p> <p>25 topic, just a couple of questions. Do you</p>	<p style="text-align: right;">Page 129</p> <p>1 P. Degnan</p> <p>2 know whether or not your staff asked for</p> <p>3 examples of those worksheets?</p> <p>4 A. I know that we have a limited --</p> <p>5 my understanding, a very limited number of</p> <p>6 these. We also -- we did specifically ask</p> <p>7 for a blank template as to what these would</p> <p>8 look like. But as you can see from the</p> <p>9 date, they were starting to be used, this</p> <p>10 fell outside the scope of our testing</p> <p>11 period, so we didn't -- we didn't test them</p> <p>12 on anybody. We just used them for</p> <p>13 information to track.</p> <p>14 Q. Were the samples sufficient for</p> <p>15 you to draw any conclusions at all?</p> <p>16 A. No.</p> <p>17 Q. Having looked at the template and</p> <p>18 the --</p> <p>19 A. Can I correct that for a second?</p> <p>20 Q. Sure.</p> <p>21 A. Other than, you know, I will say</p> <p>22 that while we drew no formal conclusions as</p> <p>23 a result, it does appear that, again, these</p> <p>24 worksheets are being submitted with</p> <p>25 recipient-submitted data, and in line with</p>

<p style="text-align: right;">Page 130</p> <p>1 P. Degnan</p> <p>2 our recommendation, we would suggest that</p> <p>3 if they are going to be relied on, there</p> <p>4 should be a testing process to make sure</p> <p>5 that that data is accurate and fairly</p> <p>6 presented.</p> <p>7 Q. Another version of trust by</p> <p>8 verifying?</p> <p>9 A. Sure, yeah.</p> <p>10 Q. And thank you. Let's move on to</p> <p>11 the next topic.</p> <p>12 So I want to ask you some</p> <p>13 questions about that report's finding with</p> <p>14 respect to net benefit analysis. But</p> <p>15 before I do that, I would put the terrible</p> <p>16 onus on you, if you'd describe if you can,</p> <p>17 in layman's terms what the net benefit</p> <p>18 analysis is so that the public can</p> <p>19 understand it and why it's important.</p> <p>20 A. The net benefit analysis is an</p> <p>21 evaluation of the benefit that the state</p> <p>22 will receive as a result of a given</p> <p>23 project, whether that's jobs retained, jobs</p> <p>24 created, capital investments. That's about</p> <p>25 as far as I can go.</p>	<p style="text-align: right;">Page 131</p> <p>1 P. Degnan</p> <p>2 Q. But really, this is a way of</p> <p>3 measuring at the time of the application,</p> <p>4 what the benefit of the bargain is to the</p> <p>5 taxpayers. Is that a fair way to describe</p> <p>6 it?</p> <p>7 A. Yes, yeah.</p> <p>8 Q. Is it also fair to say if this is</p> <p>9 not carefully calculated and carefully</p> <p>10 monitored during the life of the award,</p> <p>11 there is the risk that taxpayers are not</p> <p>12 getting the benefit of the bargain?</p> <p>13 A. I mean, we concluded that the</p> <p>14 information as presented in the initial net</p> <p>15 benefit analysis needs to be verified and</p> <p>16 needs to be accurate, make sure it is</p> <p>17 accurate. I think there should be a</p> <p>18 testing process going forward to make sure</p> <p>19 that the promised benefit is, in fact,</p> <p>20 being received.</p> <p>21 Q. So why don't we begin that</p> <p>22 discussion then. If you can, go to again</p> <p>23 in tab 2, this one is identified as flag</p> <p>24 number 4. And there is, I think, a</p> <p>25 highlighted paragraph there that you can</p>
<p style="text-align: right;">Page 132</p> <p>1 P. Degnan</p> <p>2 read into the record. I'll have you read a</p> <p>3 couple of short paragraphs in, and then I'm</p> <p>4 just going to ask you some questions about</p> <p>5 the whats and whys.</p> <p>6 A. This is from page 15 of our</p> <p>7 report.</p> <p>8 Q. I believe it's flag 4.</p> <p>9 A. "We found several deficiencies</p> <p>10 related to EDA's economic benefit analysis</p> <p>11 of our sample projects which are set forth</p> <p>12 below. We note that these deficiencies for</p> <p>13 the most part were traced back to failures</p> <p>14 in the EDA's assessment of a project's</p> <p>15 NBA," or net benefit analysis.</p> <p>16 Q. Sir, let me first ask you if you</p> <p>17 can, explain to us in simple terms what</p> <p>18 this means.</p> <p>19 A. I mean, it means pretty much</p> <p>20 exactly what it says, we found deficiencies</p> <p>21 in the preparation and analysis of these</p> <p>22 data points.</p> <p>23 Q. But what is the significance of</p> <p>24 that in terms of the net benefit analysis?</p> <p>25 If there are deficiencies in the</p>	<p style="text-align: right;">Page 133</p> <p>1 P. Degnan</p> <p>2 calculations, what does that mean?</p> <p>3 A. It could mean any number of</p> <p>4 things, one of which is that the benefits</p> <p>5 being promised to the state isn't actually</p> <p>6 going to come to fruition or that it would</p> <p>7 lead to a miscalculation of the incentive,</p> <p>8 any number of problems.</p> <p>9 Q. But, again, just to summarize the</p> <p>10 risk -- and if I am summarizing this</p> <p>11 unfairly, I'm sure you will tell me -- the</p> <p>12 risk is that in each of these situations</p> <p>13 that the taxpayer is not going to get the</p> <p>14 benefit that was promised. Is that a fair</p> <p>15 summary?</p> <p>16 A. I would say there is potential</p> <p>17 that the taxpayer doesn't get the benefits</p> <p>18 promised.</p> <p>19 Q. So then if you would go flag 5</p> <p>20 and go to the highlighted at paragraph F,</p> <p>21 there is one specific example that I want</p> <p>22 to ask you about in terms of deficiencies</p> <p>23 in terms of calculations.</p> <p>24 So I apologize if it's a little</p> <p>25 bit on the long side, but if you could read</p>

<p style="text-align: right;">Page 134</p> <p>1 P. Degnan 2 that in, I'd appreciate it. 3 A. This is one of the specific 4 examples that we highlight within the 5 section, Section F, "Did not provide the 6 complete net benefit analysis for one HUD 7 project in our sample. That project was 8 approved based on the creation of an 9 estimated 212 new jobs, for a total 10 incentive award valued at 41.7 million 11 dollars. 12 "EDA was not able to recalculate 13 the net benefit analysis based on partial 14 information that was available in the 15 project file. As a result, OSC was unable 16 to verify the data inputs or determine 17 whether the net benefit analysis was 18 properly calculated. The HUD statute and 19 regulations required that new jobs exceed 20 the statewide employment level in the 21 period before the award was approved. 22 "Our audit found, however, that 23 recipient's statewide employment actually 24 declined during the award performance 25 period between 2010 and 2017. This</p>	<p style="text-align: right;">Page 135</p> <p>1 P. Degnan 2 particular recipient has received incentive 3 awards totaling 29.2 million dollars 4 through 2018." 5 Q. Sir, just, again, to break that 6 down so the information is accessible, let 7 me just ask you a couple of things. 8 Whoever this company was, they 9 got approved for 41.7 million dollars worth 10 of tax credits. Did I understand that 11 correctly? 12 A. Yes. 13 Q. And as of the time of your audit, 14 they had actually been paid 29.2 million 15 dollars of that 41 million? 16 A. It looks like that's right. The 17 recipient received incent awards totaling 18 29.2 million. 19 Q. And the problems that you found 20 in this one example were that they didn't 21 have adequate information to do the net 22 benefit calculation in the first place, 23 correct? 24 A. The -- let's see. It appears 25 that there was not sufficient information</p>
<p style="text-align: right;">Page 136</p> <p>1 P. Degnan 2 to do a recalculation based on the 3 information which was in the project file, 4 so we then couldn't go back and verify 5 whether the original NBA was accurate. 6 Q. But there is a second problem 7 here, isn't there, Comptroller, which is, 8 this particular program has a requirement 9 that employment levels have to stay 10 statewide at a certain level. And 11 apparently, do I understand your conclusion 12 that, unbeknownst to EDA, their employment 13 had actually declined and nobody at EDA was 14 checking? 15 A. Well, I would say that we did 16 find the decline. We did not make a 17 conclusion as to whether or not EDA was 18 checking. I can't speak to that. 19 But it appears based on our data 20 that the employment level was declining. 21 Q. So just so I'm clear, if, in a 22 hypothetical situation, if EDA found that 23 someone was out of compliance, and we are 24 going to get to this actually in the next 25 topic, they were noncompliant, which I</p>	<p style="text-align: right;">Page 137</p> <p>1 P. Degnan 2 think is the phrase that you used in the 3 report, meaning that there is some aspect 4 of the requirements that they are not 5 complying with, what is your general 6 understanding of EDA's three options for 7 dealing with a noncompliant company? 8 A. So I -- I mean, from the outset, 9 I think that's difficult. That would be 10 defined in the award agreement between EDA 11 and the awardee, but generally speaking, 12 you could suspend the awardee, terminate 13 the employee -- the employee -- an awardee, 14 or you could initiate a claw back process 15 and try to retain or recoup some of the 16 awards that had already been paid. 17 Q. So I guess two natural questions 18 probably come to mind out of that. One -- 19 and if you don't know the answer, please 20 just say you don't know the answer, but I 21 would ask this to go in kind of the 22 follow-up category. 23 Do you know whether at the time 24 of your audit, EDA had initiated any 25 process to suspend, terminate or claw back</p>

<p style="text-align: right;">Page 138</p> <p>1 P. Degnan</p> <p>2 money from this company?</p> <p>3 A. From this company? The company</p> <p>4 in section F here? As I sit here right</p> <p>5 now, I don't know.</p> <p>6 Q. And just so people understand</p> <p>7 what a corrective action program is, when</p> <p>8 you identify something like this in the</p> <p>9 report, where you are saying the company is</p> <p>10 not in compliance or noncompliant, is part</p> <p>11 of the corrective action that EDA has to</p> <p>12 now go back and opt which of those</p> <p>13 things -- I guess the fourth option, they</p> <p>14 could, I suppose, renegotiate. Right?</p> <p>15 But do they have to take some</p> <p>16 action with respect to the corrective</p> <p>17 action plan for each of these times where</p> <p>18 you found that there was an improper</p> <p>19 payment or an overpayment?</p> <p>20 A. You know, have to? I don't know.</p> <p>21 I would say that our recommendations are</p> <p>22 more forward-looking and designed to</p> <p>23 correct problems we identify going forward.</p> <p>24 So there is no -- there are no</p> <p>25 defined aspects of the correction --</p>	<p style="text-align: right;">Page 139</p> <p>1 P. Degnan</p> <p>2 corrective action plan that would</p> <p>3 necessarily require them to go back and do</p> <p>4 a look-back.</p> <p>5 Q. I am sorry, I know that I</p> <p>6 didn't -- we both know, we have met before,</p> <p>7 right? I've interviewed you. I mean, we</p> <p>8 can state for the record that you provided,</p> <p>9 because you are very busy and these are</p> <p>10 complicated questions, it would be</p> <p>11 completely unfair to surprise you, so we</p> <p>12 provided you with some of our questions.</p> <p>13 I want to go off the questions</p> <p>14 that I put, and if you can't answer the</p> <p>15 questions, that's totally fine.</p> <p>16 But is there a mechanism then</p> <p>17 where, somewhere in the government,</p> <p>18 somebody says to EDA, to the extent that</p> <p>19 you go back and look and you agree with the</p> <p>20 comptroller and these companies are not</p> <p>21 compliant, you have to make an election.</p> <p>22 You don't have to elect which one of the</p> <p>23 things, but you have to take action with</p> <p>24 respect to the companies that, for which</p> <p>25 they either got an improper payment because</p>
<p style="text-align: right;">Page 140</p> <p>1 P. Degnan</p> <p>2 there is not enough verification or there</p> <p>3 is an improper payment for a mistake like</p> <p>4 these? Can you answer that?</p> <p>5 A. Is there a mechanism? I can tell</p> <p>6 you that we don't have the authority to</p> <p>7 insist that that be done. So it's really</p> <p>8 up to the agency and -- you know, the</p> <p>9 executive branch at large to make the</p> <p>10 decision.</p> <p>11 Q. OK, that makes sense.</p> <p>12 So I'm -- you will be happy to</p> <p>13 know I'm near the end.</p> <p>14 I would like to discuss your</p> <p>15 report's finding with respect to EDA's</p> <p>16 process for the management and oversight of</p> <p>17 the incentive awards.</p> <p>18 So we just talked about this a</p> <p>19 little bit. So that there is no room for</p> <p>20 doubt in a public's mind, just define what</p> <p>21 your report meant when it was talking about</p> <p>22 identification and action with respect to</p> <p>23 noncompliant companies.</p> <p>24 A. So we did find some examples of</p> <p>25 companies that hadn't met, or awardees that</p>	<p style="text-align: right;">Page 141</p> <p>1 P. Degnan</p> <p>2 hadn't met their end of the bargain, and we</p> <p>3 viewed them as noncompliant awardees.</p> <p>4 Q. And again, just to be clear, I</p> <p>5 don't want to be redundant, but three of</p> <p>6 the options available in a noncompliant</p> <p>7 situation are suspension, termination,</p> <p>8 clawback or a combination of those?</p> <p>9 A. Right, those are the three</p> <p>10 possibilities I'm aware of. There may be</p> <p>11 others.</p> <p>12 Q. OK. Sir, there is one topic that</p> <p>13 you talked about earlier, and I just want</p> <p>14 to make sure the record is clear about</p> <p>15 this. Is there a statutory requirement</p> <p>16 that EDA monitor the performance with all</p> <p>17 of these different tax incentive programs?</p> <p>18 Is that actually something the law requires</p> <p>19 them to do, or is it just principles of</p> <p>20 good government that dictate that they</p> <p>21 should?</p> <p>22 A. Yeah, I discussed this one more</p> <p>23 generically. There really isn't a statute,</p> <p>24 section or language that sets the</p> <p>25 parameters for the amount of oversight, the</p>

<p style="text-align: right;">Page 142</p> <p>1 P. Degnan</p> <p>2 manner in which oversight is conducted. So</p> <p>3 our findings were much more based on best</p> <p>4 practices, good government ideas, and just</p> <p>5 get a sense that any agency that has the</p> <p>6 responsibility for oversight of this amount</p> <p>7 of taxpayer funds or tangentially impacts</p> <p>8 taxpayer funds has an obligation to have a</p> <p>9 robust oversight program.</p> <p>10 Q. So is that another way of saying</p> <p>11 that one possible fix to the problems that</p> <p>12 the auditor found, the state auditor and</p> <p>13 the problems that you found, is that in any</p> <p>14 forward-looking litigation, there is</p> <p>15 actually a provision that specifies exactly</p> <p>16 what the agency needs to do to monitor</p> <p>17 company compliance with tax incentive</p> <p>18 programs?</p> <p>19 A. Any forward-looking legislation?</p> <p>20 I'm sorry.</p> <p>21 Q. New legislation.</p> <p>22 A. New legislation, it certainly</p> <p>23 could be built into it. I hesitate to</p> <p>24 opine as to whether or not that's</p> <p>25 appropriate. I think there is always a</p>	<p style="text-align: right;">Page 143</p> <p>1 P. Degnan</p> <p>2 degree of, you can certainly make the</p> <p>3 argument that there is a degree of</p> <p>4 flexibility that you want to leave in the</p> <p>5 hands of the agency to react to conditions</p> <p>6 that they would be more quickly able to</p> <p>7 adapt to than going through the legislative</p> <p>8 process for a fix. But certainly something</p> <p>9 worth considering.</p> <p>10 Q. Thank you. Let's turn to your</p> <p>11 findings then with respect to this, and if</p> <p>12 you go to page 23 of your report and you</p> <p>13 will see, I think that it is at flag 6,</p> <p>14 there are two of the examples that you list</p> <p>15 here that I just want to ask you a couple</p> <p>16 of follow-up questions.</p> <p>17 Would you mind just reading the</p> <p>18 first highlighted paragraph and stop, and</p> <p>19 I'll ask you a couple of questions, and</p> <p>20 then we'll go to the second.</p> <p>21 A. Sure. This is page 23 of the</p> <p>22 comptroller's report of our audit. "The</p> <p>23 sample projects found several instances</p> <p>24 where the EDA failed to take any action</p> <p>25 when recipients failed to meet the terms of</p>
<p style="text-align: right;">Page 144</p> <p>1 P. Degnan</p> <p>2 their award agreements. Specifically, one</p> <p>3 BRAG recipient had not submitted the annual</p> <p>4 reports for two reporting periods. One was</p> <p>5 more than a year late, and the other was a</p> <p>6 few months late."</p> <p>7 Q. So let me just stop there. This</p> <p>8 kind of gets to the heart of what I was</p> <p>9 asking about before.</p> <p>10 Is it fair to say one general</p> <p>11 finding was, in that circumstance where</p> <p>12 there was noncompliance, that EDA was</p> <p>13 generally not taking action to cure,</p> <p>14 whether it was through renegotiations,</p> <p>15 suspension, termination or clawback, EDA</p> <p>16 was not taking action to cure those</p> <p>17 problems within your sample set?</p> <p>18 Obviously, I'm not asking you for stuff</p> <p>19 outside of the sample set.</p> <p>20 A. I think that's fair to say within</p> <p>21 our sample set.</p> <p>22 Q. And then the second paragraph, if</p> <p>23 you don't mind?</p> <p>24 A. Sure.</p> <p>25 "We also found two BRAG</p>	<p style="text-align: right;">Page 145</p> <p>1 P. Degnan</p> <p>2 recipients and one Grow New Jersey</p> <p>3 recipient failed to meet certain employment</p> <p>4 levels as required by their board agreement</p> <p>5 letters and/or project agreement terms."</p> <p>6 Q. OK. So I want to ask you about</p> <p>7 this, and I want to unpack this a little</p> <p>8 bit because I listened twice, actually, to</p> <p>9 your testimony before the legislature, and</p> <p>10 one of the things that the legislators, I</p> <p>11 think, focused on was the fact -- and it is</p> <p>12 important for people to understand that, a</p> <p>13 company says a job is there.</p> <p>14 What your audit did, if I</p> <p>15 understand correctly, is not determine</p> <p>16 whether the job was there or not. It was</p> <p>17 to determine whether or not EDA collected</p> <p>18 enough information to verify that the job</p> <p>19 was there, and if they didn't do that, you</p> <p>20 would call that an improper payment. But</p> <p>21 that has nothing to do with whether or not</p> <p>22 the job exists or not. It has to do with</p> <p>23 EDA's verification process. Did I explain</p> <p>24 that accurately?</p> <p>25 A. It was a lot of words, but I</p>

<p style="text-align: right;">Page 146</p> <p>1 P. Degnan 2 believe that's right. It's -- right, I 3 mean, we did not conclude at any point 4 through the audit process whether these 5 jobs did exist or didn't exist. 6 What we concluded was there 7 wasn't sufficient information, or there 8 were gaps in the information that didn't 9 allow us to say conclusively one way or 10 another. 11 So if a payment was made or if an 12 award was -- the benefit was conferred to 13 an awardee, based upon a job that we 14 couldn't verify, then we would consider 15 that an improper benefit for that job. 16 Q. Got it. OK. 17 But this language seemed 18 different to me because here it looked like 19 you were drawing a conclusion about the 20 existence of jobs. So can you just read 21 that again and then tell me if I am reading 22 this correctly, that this is qualitatively 23 different? Is this an example of you 24 actually finding that there is a company 25 that didn't meet their employment levels?</p>	<p style="text-align: right;">Page 147</p> <p>1 P. Degnan 2 A. This relates more to the annual 3 report. I would have to -- I would have to 4 go back and get a little more information 5 on that. 6 I assume you're talking about the 7 second sentence, and I see what -- to 8 understand the basis for your question, I 9 would have to go back and get a little more 10 information on that. 11 Q. Could we make that request to 12 you. Could you follow up on that? 13 A. Sure. 14 Q. I'm not saying that you 15 necessarily provide us with this, but 16 someone in your office knows exactly what 17 company this is? 18 A. I would assume so. Yes. 19 Q. And again, just to punctuate this 20 point, part of EDA's corrective action plan 21 is likely not going to be a plan to go back 22 and make sure that these companies repay if 23 they are noncompliant? That's not 24 something you can force them to do. 25 A. I can't force them to do it. But</p>
<p style="text-align: right;">Page 148</p> <p>1 P. Degnan 2 they might certainly incorporate it into 3 their plan. I don't know. I haven't seen 4 it. 5 Q. OK, I am going to streamline some 6 of the rest of the questions, and because I 7 think this is something I would like you to 8 follow up on, assuming that I understand 9 this correctly. 10 Is it fair to say that one of 11 your primary conclusions was that there is 12 roughly 3,000 jobs -- really, it is 13 2,993 -- jobs that, in the estimation of 14 your audit, were not verified or 15 sufficiently verified such that a payment 16 was proper for those jobs? 17 A. Yes, but it does warrant a little 18 bit of explanation if you don't mind. 19 Q. Please. 20 A. Just to clarify the time period. 21 And in reading the report, we didn't break 22 it down on this level. So I understand 23 that, it's not abundantly clear from the 24 lines of the report. 25 It's 2,993 jobs, not on a yearly</p>	<p style="text-align: right;">Page 149</p> <p>1 P. Degnan 2 basis. It's over a period of time with an 3 ever-fluctuating amount of jobs from year 4 to year that either need to be retained or 5 remain. 6 So -- again, I apologize, I don't 7 know if I am explaining that very well. 8 But it is a much larger universe of jobs 9 that we found the 2,993 were not verifiable 10 out of then than simply the yearly 11 requirement of a single year. 12 Q. OK, I think that's clear, but I'm 13 going to unpack it a little bit. 14 You said that this was total jobs 15 over a period of time. As you sit there 16 right now, do you know what period of time 17 it was? 18 A. So I'll speculate, I believe it 19 was over the course of the entire audit 20 sample period which was, I believe, from 21 2005 to 2017. But I -- if I am wrong about 22 that, I'll clarify. 23 Q. So I'm going to ask you a couple 24 of questions punctuated with a, could you 25 help us understand this. You quantify --</p>

<p style="text-align: right;">Page 150</p> <p>1 P. Degnan</p> <p>2 your report does a wonderful job at</p> <p>3 quantifying, and I think that's really</p> <p>4 important for people to understand, how</p> <p>5 much money are we talking about?</p> <p>6 But the one thing that the report</p> <p>7 didn't do is to quantify the tax cost for</p> <p>8 this roughly 3,000 jobs, right? Did I</p> <p>9 understand that correctly, that there is</p> <p>10 not a point in your report where you say,</p> <p>11 OK, these were improper payments which</p> <p>12 means money went out and there is lack of</p> <p>13 money coming in, and the tax cost of that</p> <p>14 to New Jersey's taxpayers is whatever the</p> <p>15 dollar amount is.</p> <p>16 A. That's right.</p> <p>17 Q. That's right. OK.</p> <p>18 And do I understand correctly</p> <p>19 that the tax cost per job is really a</p> <p>20 variable of what program was involved,</p> <p>21 whether it was a retained or a new job,</p> <p>22 because there is a big difference in the</p> <p>23 tax cost of that, whether it was in Camden</p> <p>24 or in one of the northern counties? Do I</p> <p>25 understand that there are different</p>	<p style="text-align: right;">Page 151</p> <p>1 P. Degnan</p> <p>2 variables that impact the tax cost per job?</p> <p>3 A. We didn't do that calculation.</p> <p>4 So if you are representing that, I have no</p> <p>5 reason to not believe you, but I don't have</p> <p>6 any information on it.</p> <p>7 Q. So here is my question to you:</p> <p>8 Do you think after we are done here at some</p> <p>9 point in the next couple of weeks you could</p> <p>10 ask your staff to quantify that amount so</p> <p>11 that there is some transparency to how much</p> <p>12 money that cost the taxpayer?</p> <p>13 There is 3,000 jobs over the</p> <p>14 course of that period of time. Is that a</p> <p>15 calculation you think your staff can and</p> <p>16 would do?</p> <p>17 A. I don't know. I don't know that</p> <p>18 we have the data to do that. I mean, based</p> <p>19 on our conversations, I believe I know</p> <p>20 where you're getting some of that</p> <p>21 information from. That's not from us.</p> <p>22 If we were to do that</p> <p>23 calculation, it would be relying on</p> <p>24 information that we did not test or verify.</p> <p>25 There is no -- as far as I understand it,</p>
<p style="text-align: right;">Page 152</p> <p>1 P. Degnan</p> <p>2 and I will confirm this, we have nothing</p> <p>3 in-house at the comptroller's office that</p> <p>4 furthers that calculation.</p> <p>5 Q. Is that the reason that you</p> <p>6 didn't quantify it in your report?</p> <p>7 A. Yeah, I -- I can't really speak</p> <p>8 to why we did or didn't expand on the</p> <p>9 finding.</p> <p>10 Q. Just to bring this topic to a</p> <p>11 close, is it fair to say -- I will ask some</p> <p>12 leading questions here so we can move on --</p> <p>13 is it fair to say that for those people</p> <p>14 that read the audit report this shouldn't</p> <p>15 be a surprise because even the auditor</p> <p>16 found, as you pointed out in the report,</p> <p>17 that back then, two years earlier, there</p> <p>18 was still a significant number of jobs that</p> <p>19 were not being verified and for which there</p> <p>20 were improper payments?</p> <p>21 A. Again, without having a complete</p> <p>22 understanding of the auditor's report, the</p> <p>23 state auditor's report, it is hard for me</p> <p>24 to compare our findings with their</p> <p>25 findings. But as I discussed earlier,</p>	<p style="text-align: right;">Page 153</p> <p>1 P. Degnan</p> <p>2 there do appear to be some similarities.</p> <p>3 Q. Let me just then ask you to go to</p> <p>4 tab 3, flag 2, and you will see that there</p> <p>5 is a highlighted paragraph there, and I</p> <p>6 think this is the last time I'm going to</p> <p>7 ask you to read into the record. Could you</p> <p>8 read that for us?</p> <p>9 A. So again, this is from the state</p> <p>10 auditor's report. Page 5, "Our review of</p> <p>11 another business that received a BRAG grant</p> <p>12 in 2009 for retaining the 500 full-time</p> <p>13 positions disclosed that 52 of the 500</p> <p>14 employees purported to be filling the</p> <p>15 positions as of December 31, 2009 only had</p> <p>16 earnings in the fourth quarter of 2009. We</p> <p>17 could not determine if the 52 employees</p> <p>18 were replacements, seasonal hires or</p> <p>19 regular new hires employed at the end of</p> <p>20 the year just to fulfill the grant</p> <p>21 conditions since the employee list received</p> <p>22 for 2009 only contained the names of 500</p> <p>23 individuals."</p> <p>24 BY WITNESS' ATTORNEY:</p> <p>25 Q. So that's the highlight, I put a</p>

<p style="text-align: right;">Page 154</p> <p>1 P. Degnan 2 stop there? 3 A. You did. 4 Q. So this is the last topic I want 5 to ask you about, which is obviously this 6 is similar to, not the same as but similar 7 to what we found in the report. 8 But one of the things that your 9 report found was that you also noticed that 10 there were a number of examples where 11 companies would hire just before the 12 certification deadline. 13 Do you remember that in your 14 report? 15 A. We did find that. 16 Q. So can you unpack that for us a 17 little bit? Because from where I sit, it 18 kind of looks like gaming the system. But 19 from an audit perspective, what's your 20 takeaway from that observation being now 21 made twice for a fairly significant number 22 of jobs at the state level? 23 A. So I think that the takeaway from 24 that is that we highlighted that it has 25 happened. We did not make a value judgment</p>	<p style="text-align: right;">Page 155</p> <p>1 P. Degnan 2 as to what it really means. It may be that 3 the EDA accepted those jobs rightfully. I 4 don't know as I sit here right now. 5 But I certainly understand your 6 question as to what it might have looked 7 like, and it is something that we would 8 recommend that they examine, get as full 9 information on that as they can before they 10 would certify those jobs as being 11 acceptable. 12 Q. I want to unpack that. If I 13 misunderstand this, I would much rather 14 know now than six months from now, have 15 moving ground under my feet, and I could 16 misunderstand this. 17 But when a company is certifying 18 for -- let's just put numbers on it. Let's 19 say a company is certifying for 100 jobs, 20 they're certifying at the end of the year, 21 and they are getting the award for that 22 year in the following quarter. Do I 23 understand the process right? 24 A. Again, I'll take your 25 representation on that. It depends on the</p>
<p style="text-align: right;">Page 156</p> <p>1 P. Degnan 2 program to a certain degree and -- 3 Q. But aren't all certifications the 4 same? Where there is a certification, 5 there is a certification by the CEO at the 6 end of the year. It's for the prior year. 7 And then once the certification comes, you 8 can't get the money until the certification 9 comes, and they get the money the next 10 quarter or thereafter? 11 A. Yeah, I'm sorry if I 12 misunderstood you. 13 Q. No, no, we both know that I'm not 14 always very clear. 15 A. You're fine. 16 Q. So if a company is certifying at 17 the end of the year for a job and the 18 payroll data from the Department of Labor 19 shows that the person wasn't an employee 20 until some part of the fourth quarter, am I 21 understanding this correctly, that that is 22 not a proper certification for a job 23 because the job came at the end of the 24 year? They couldn't certify that that job 25 was a full-time equivalent, 80 percent at</p>	<p style="text-align: right;">Page 157</p> <p>1 P. Degnan 2 the location where they are specified for 3 the entire year? Do I misunderstand that? 4 A. I hesitate to say whether it is 5 proper or improper. There could be other 6 explanations for why that individual job 7 showed up when it did. There could have 8 been a change in title that maybe result in 9 a -- I'm starting to speculate on why there 10 might be other reasons for that happening. 11 So I think the takeaway for us 12 was, you know, better to identify the 13 individual jobs with specific identifiers, 14 the names, and I know there is a dispute 15 about whether social security numbers 16 should be used. But a way to conclusively 17 track jobs through the course of time that 18 they are required to be maintained would 19 prevent against any inadvertent problems 20 and would allow the agency to better 21 administer data that is intentionally 22 misrepresented. 23 Q. I may have a follow-up question 24 for you later, but we can move on for now. 25 Just to close this out, when is</p>



<p style="text-align: right;">Page 158</p> <p>1 P. Degnan</p> <p>2 EDA's corrective action plan?</p> <p>3 A. I believe it's April 9. That's</p> <p>4 the date that is stuck in my head.</p> <p>5 Q. Would you consider, as part of</p> <p>6 that deliberative process with them,</p> <p>7 encouraging them to go after the companies</p> <p>8 that were not compliant if they agreed that</p> <p>9 your analysis is correct? Is that</p> <p>10 something that you would consider?</p> <p>11 A. Again, we don't really have a</p> <p>12 mechanism to compel them to do it. Our</p> <p>13 recourse, if we believe that they are --</p> <p>14 with anyone -- not participating</p> <p>15 meaningfully in the audit process or</p> <p>16 corrective action process is to report that</p> <p>17 to the governor.</p> <p>18 MR. WALDEN: Professor Chen,</p> <p>19 sorry I took so long. Any other</p> <p>20 questions?</p> <p>21 MR. CHEN: I mean, there is sort</p> <p>22 of 30,000-foot question. But I wanted</p> <p>23 to qualify your extensive experience in</p> <p>24 state government in general. EDA is</p> <p>25 certainly not the only state agency,</p>	<p style="text-align: right;">Page 159</p> <p>1 P. Degnan</p> <p>2 state entity that deals with a lot of</p> <p>3 money or that deals with program</p> <p>4 recipients and has to determine their</p> <p>5 eligibility. And obviously one -- one</p> <p>6 obvious thrust of your report and</p> <p>7 others is that EDA right now doesn't</p> <p>8 have sufficient accounting or</p> <p>9 verification processes by which to</p> <p>10 verify the eligibility.</p> <p>11 We were talking -- part of our,</p> <p>12 the task force function, we recommend</p> <p>13 how to fix that. Mr. Walden talks</p> <p>14 about possible legislation, and you</p> <p>15 know, as we all know, putting something</p> <p>16 in a statute, once you put it in there</p> <p>17 it's not difficult -- it's not easy to</p> <p>18 change it and, therefore, the agency</p> <p>19 may want to have some flexibility.</p> <p>20 In your experience -- I don't</p> <p>21 know if you have done other performance</p> <p>22 audits for other agencies -- are there</p> <p>23 models also in the state government for</p> <p>24 how other agencies can deal with this</p> <p>25 auditing function as a governmental</p>
<p style="text-align: right;">Page 160</p> <p>1 P. Degnan</p> <p>2 entity?</p> <p>3 Unlike a private corporation, you</p> <p>4 don't have an outside auditor come in</p> <p>5 and perform. Is there an inspectors</p> <p>6 general or do they have an audit</p> <p>7 division? Is that something they can</p> <p>8 handle by regulation that the agency</p> <p>9 can control?</p> <p>10 THE WITNESS: Well, I do know</p> <p>11 that, based on their response, EDA has</p> <p>12 created almost an in-house audit</p> <p>13 division to do more in-depth</p> <p>14 examinations of applicants. They also</p> <p>15 have a contract with an independent</p> <p>16 accounting firm to perform audits. We</p> <p>17 have made recommendations as to that</p> <p>18 practice --</p> <p>19 MR. CHEN: Just to be clear on</p> <p>20 terminology, that type of audit is not</p> <p>21 the performance audit that you</p> <p>22 performed?</p> <p>23 THE WITNESS: I don't know the</p> <p>24 exact scope. That's one of the issues</p> <p>25 that we had, was that we would suggest</p>	<p style="text-align: right;">Page 161</p> <p>1 P. Degnan</p> <p>2 a little more independence injected</p> <p>3 into that process to give the auditor a</p> <p>4 little more freedom to look into areas</p> <p>5 that he or she believes are warranted.</p> <p>6 But in terms of other agencies we</p> <p>7 can look to as examples, it brings up</p> <p>8 an interesting issue. These -- it is</p> <p>9 one of the frustrations that auditees</p> <p>10 have with audits generally, is that</p> <p>11 oftentimes there is a feeling that we</p> <p>12 don't understand exactly what we are</p> <p>13 talking about.</p> <p>14 I, of course, disagree with that.</p> <p>15 But that's not to say -- these are</p> <p>16 enormously complicated programs. There</p> <p>17 is a tremendous volume of data that has</p> <p>18 to be analyzed and looked at. This is</p> <p>19 not easy, and nothing in our audit was</p> <p>20 ever intended to suggest that this is</p> <p>21 easy.</p> <p>22 So I really think that given the</p> <p>23 kind of unique nature of these</p> <p>24 programs, EDA is probably in the best</p> <p>25 position to come up with a way to</p>

<p style="text-align: right;">Page 162</p> <p>1 P. Degnan 2 address the recommendations. We hope 3 that other agencies with similar 4 charters would look at these issues 5 that we found and see if they translate 6 in some way to what they do. But I 7 can't point to another organization and 8 say, you know, we should be doing it 9 that way. 10 MR. CHEN: Comptroller Degnan, 11 thank you so much for appearing and 12 also thank you for all the cooperation 13 that your office and your staff have 14 given the task force. 15 THE WITNESS: Thank you, and we 16 are happy to continue to help. 17 MR. WALDEN: I just I want to -- 18 if I can, Professor Chen, just do two 19 things, which is, first of all, I just 20 want to, for the record, provide 21 information that is baseline because I 22 think it is kind of important for the 23 public to understand the potential cost 24 of these 3,000 jobs. 25 So again, I think that there is a</p>	<p style="text-align: right;">Page 163</p> <p>1 P. Degnan 2 lot more that we have to understand 3 about the jobs, but hopefully there may 4 be another way to peel this out to make 5 sure that the data is tested. If we 6 make a couple of assumptions, I think 7 that we can come to maybe a minimum 8 number, and that is, we don't know 9 which of these programs the jobs were 10 not created as a part of. So that's 11 probably the largest assumption. 12 So let's just assume for the sake 13 of argument, the one thing that we know 14 is we know what the tax cost of jobs 15 are in the New Jersey Grow program, so 16 let's just do what is probably not true 17 and it may not be conservative, but 18 they are all New Jersey Grow jobs. 19 But we can make a second very 20 conservative assumption, which is some 21 of these jobs inevitably were jobs that 22 were created, and some of them were 23 jobs that were retained. And there is 24 a significant difference in tax cost 25 between those two, in that, roughly</p>
<p style="text-align: right;">Page 164</p> <p>1 P. Degnan 2 speaking, a retained job gets about 3 half of the tax -- half of the tax cost 4 as a new job. 5 So let's assume for the sake of 6 argument that all the jobs were 7 retained jobs and none of them were 8 new. 9 And moreover, as I think everyone 10 who understands this statute is aware, 11 the tax costs of jobs created in Camden 12 is significantly higher, and some 13 number of these jobs were inevitably in 14 Camden, but let's just assume that they 15 were only created in the northern 16 counties. 17 So we have to understand kind of 18 the one thing, I think, to me that was 19 unclear about this, and I think we will 20 follow up with the comptroller about 21 this is, what is the yearly number? 22 But if you assume it is not a yearly 23 number and you assume there is just one 24 value to the 3,000 jobs, if you just do 25 the multiplication, which is under the</p>	<p style="text-align: right;">Page 165</p> <p>1 P. Degnan 2 assumptions that I've stated, the cost 3 per job per year is 3,670 dollars. You 4 multiply that by 3,000 jobs, and you 5 get a number of about 11 million 6 dollars. Whether that's the total 7 number or yearly number, it provides 8 some guidance. 9 The second thing that I think -- 10 that we think that it's important for 11 people to understand is the timeline of 12 the whistleblower case that we were 13 talking about before, and before I say 14 this, I think -- I am going to say this 15 again, we are giving this information 16 so that people understand the context. 17 There may be very, very valid 18 explanations for why the litigation 19 wasn't disclosed, and I think that you 20 have all heard for yourself what the 21 language was, but if somebody can pull 22 up this slide. 23 Thank you. 24 So hopefully this is easy to 25 read, and I'm not going to belabor</p>

<p style="text-align: right;">Page 166</p> <p>1 P. Degnan 2 this, but I want people to understand 3 the general flow of this. 4 The complaint was filed in May of 5 2015. And then as for most litigation, 6 it didn't get active until later. And 7 so the action picked up, so to speak, 8 in January of 2017, which was, you 9 know, right around the time of the 10 state auditor's report. 11 And then there is something in 12 litigation called "depositions" which 13 means people sit in chairs and have to 14 answer questions, they are put under 15 oath. And starting in January of '17 16 and then going through January of 2018, 17 there is a series of depositions that 18 were taken both of the plaintiff 19 himself and various individuals within 20 EDA. 21 Right in the middle of the 22 depositions is when Executive Order 3 23 was signed, and that was the order that 24 asked the comptroller to conduct the 25 audit. And then it's our understanding</p>	<p style="text-align: right;">Page 167</p> <p>1 P. Degnan 2 that the kickoff meeting for the audit 3 happened a couple of days after the 4 signing of Executive Order Number 3. 5 After the signing of it, and the 6 next couple of weeks, there were a 7 couple more depositions, including the 8 person that was then the CEO of the 9 EDA -- I am sorry, the former CEO of 10 the EDA. The case was actually tried 11 during the audit, and many of the 12 people that were part of the EDA 13 actually were called as witnesses, and 14 then there was a verdict in May of 15 2018. 16 So it was in January of 2019 that 17 that management certification letter 18 that we talked about before that 19 contained warranties about no 20 allegations of fraud or suspected fraud 21 was filed January 3, 2019, and then on 22 January 9, the audit concluded. 23 So, again, we are going to 24 explore this, as I said before, there 25 may be legitimate, innocent</p>
<p style="text-align: right;">Page 168</p> <p>1 P. Degnan 2 explanations. Maybe it was a mistake. 3 Maybe there are other factors, but we 4 did think that since we found it 5 relatively early in the investigation 6 that it made sense to let people know 7 that we were going to look into it and 8 make the results transparent. 9 MR. CHEN: So we will take a 10 brief recess break now. So we can see 11 to various needs. 12 So it is now 12:56. We will 13 convene at 1:15. 14 (Recess) 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 169</p> <p>1 P. Degnan 2 AFTERNOON SESSION 3 1:17 p.m. 4 MR. CHEN: Good afternoon. 5 Welcome back. 6 Before we proceed with our next 7 witness, I wanted to ask Georgia 8 Winston to give a brief explanation 9 about a witness who was going to appear 10 today and give us a report on what that 11 was about. 12 MS. WINSTON: Thank you. 13 Professor Chen, we had planned to 14 hear testimony today from a second is 15 whistleblower. That witness has 16 described to us steps taken by another 17 company to manipulate employment 18 numbers and other data in its 19 submissions to the EDA in order to 20 obtain tax credits. 21 Her story further highlights the 22 risk of a failure to fully verify and 23 track job data submitted by program 24 beneficiaries. 25 Recognizing the importance of</p>

<p style="text-align: right;">Page 170</p> <p>1 P. Degnan 2 this issue to the Task Force, the 3 witness had agreed to testify 4 voluntarily. 5 Unfortunately, this morning, she 6 changed her mind in part due to 7 concerns that the company at issue, her 8 former employer, might attend. And we 9 want to reiterate here that the Task 10 Force is investigating the issues with 11 an open mind and with an eye towards 12 affording each individual or entity due 13 process, but we are also mindful that 14 the hurdles that whistleblowers feel 15 they must overcome to tell their 16 stories. 17 As with Ms. Kama who testified 18 earlier, the Task Force may issue 19 subpoenas to help alleviate some of 20 these issues when it believes that such 21 testimony will add significant 22 information to the public understanding 23 of the Task Force's work. 24 And again, I want to emphasize 25 the importance of this kind of</p>	<p style="text-align: right;">Page 171</p> <p>1 J. Goodman 2 information to that work, and I do hope 3 to hear from this witness at a future 4 date. 5 MR. CHEN: Thank you. 6 With that, I believe we will hear 7 next from Josh Goodman. Welcome 8 Mr. Goodman. And Pablo Quinones -- 9 We should administer the oath. 10 Do you solemnly swear or affirm 11 that the testimony you are going to 12 give will be the truth, the whole truth 13 and nothing but the truth? 14 THE WITNESS: I do. 15 EXAMINATION BY 16 MR. QUINONES: 17 Q. Thank you, Mr. Chen. Thank you, 18 Mr. Goodman. I know you had a long trip 19 from DC and I appreciate you being here. 20 Mr. Goodman is a senior 21 officer of economic development in the 22 state fiscal health for the Pew Charitable 23 Trusts, a nonpartisan, not-for-profit 24 public policy organization and has spent 25 time studying state tax incentive programs.</p>
<p style="text-align: right;">Page 172</p> <p>1 J. Goodman 2 We are grateful for his 3 participation today since he brings a 4 wealth of expertise as primary resource and 5 has also authored several papers on tax 6 incentive policies across the country. 7 Today, Mr. Goodman will offer 8 testimony about best practices for the 9 design, implementation and oversight of tax 10 incentive programs. He will also call for 11 suggestions on how New Jersey would improve 12 its program in those three areas. 13 And before I turn the floor over 14 to Mr. Goodman, let me say that his 15 testimony today will be in two forms. 16 First, Mr. Goodman has prepared a 17 witness statement that provides eight 18 specific ideas for New Jersey to consider 19 including the design, implementation and 20 oversight of its tax incentives. 21 Mr. Goodman will not be reading 22 these remarks today. With Professor Chen's 23 permission, they have been submitted with 24 the record and are available at the front 25 table for anybody that would like a copy.</p>	<p style="text-align: right;">Page 173</p> <p>1 J. Goodman 2 Second, Mr. Goodman will use a 3 PowerPoint presentation to explain to us 4 some of the best practices for the design, 5 implementation and the oversight of tax 6 incentives. 7 During that presentation, I will 8 ask him questions, but in large part, he 9 will be walking us through his 10 presentation. 11 Before I begin on the substance, 12 is it correct that you are testifying in 13 these proceedings today, Mr. Goodman, 14 voluntarily? 15 A. That's correct. 16 Q. Have you elected to have counsel 17 present? 18 A. I have not. 19 Q. Are you aware the EDA may ask 20 you -- may ask to cross-examine you at the 21 conclusion of your testimony or at some 22 other point in time? 23 A. I am. 24 Q. Thank you, Mr. Goodman. 25 Before you begin your</p>

<p style="text-align: right;">Page 174</p> <p>1 J. Goodman</p> <p>2 presentation, would you simply describe the</p> <p>3 eight specific suggestions that you are</p> <p>4 prepared to cover?</p> <p>5 A. Yes. So first, NJ policymakers</p> <p>6 should clarify the goals is the state's</p> <p>7 incentives.</p> <p>8 Second, the state should consider</p> <p>9 further targeting incentives to businesses</p> <p>10 that will grow the state's economy, such as</p> <p>11 companies that sell their goods nationally</p> <p>12 and internationally.</p> <p>13 Third, New Jersey should consider</p> <p>14 shortening the timeframes on which it</p> <p>15 offers incentives.</p> <p>16 Fourth, the state could</p> <p>17 potentially fine-tune its approach to</p> <p>18 targeting the incentives to distressed</p> <p>19 areas.</p> <p>20 Fifth, New Jersey can establish</p> <p>21 strong fiscal protection for incentives.</p> <p>22 Sixth, the state can ensure that</p> <p>23 it's effectively verifying that businesses</p> <p>24 met their commitments to create jobs or</p> <p>25 make investments before issuing tax</p>	<p style="text-align: right;">Page 175</p> <p>1 J. Goodman</p> <p>2 credits.</p> <p>3 Seventh, New Jersey should</p> <p>4 establish regular, independent evaluations</p> <p>5 of tax incentive programs.</p> <p>6 Eighth and finally, New Jersey</p> <p>7 could assess whether there are ways to</p> <p>8 enhance the data it produces about the</p> <p>9 future costs of the incentives.</p> <p>10 Q. Thank you for that summary, Mr.</p> <p>11 Goodman.</p> <p>12 Let's turn your presentation,</p> <p>13 Best Practices for Economic Development</p> <p>14 Incentives and Policy Considerations for</p> <p>15 New Jersey. Please begin.</p> <p>16 A. Thanks very much and thank you</p> <p>17 very much for extending the invitation.</p> <p>18 We have at Pew have been</p> <p>19 researching economic tax incentives for the</p> <p>20 last eight years, and the focus of our work</p> <p>21 is on helping states improve the</p> <p>22 effectiveness of their incentives and</p> <p>23 helping states make better decisions in</p> <p>24 forming incentives.</p> <p>25 So we don't come into the work</p>
<p style="text-align: right;">Page 176</p> <p>1 J. Goodman</p> <p>2 with any preconceived ideas about what</p> <p>3 specific types of incentives they should</p> <p>4 have and whether they should use incentives</p> <p>5 or not. What we want to do is help states</p> <p>6 build the capacity to analyze their</p> <p>7 incentives more effectively for</p> <p>8 themselves.</p> <p>9 So today I'm going to talk about</p> <p>10 three key aspects of incentive policy.</p> <p>11 The first is how the programs are</p> <p>12 designed. What is actually in the statute</p> <p>13 that lays out sort of the structure of</p> <p>14 these programs.</p> <p>15 In the second, how they are</p> <p>16 implemented. How can administering</p> <p>17 agencies run the programs sufficiently and</p> <p>18 effectively.</p> <p>19 And then third is oversight, how</p> <p>20 should agencies beyond the administrating</p> <p>21 agency provide oversight on these programs.</p> <p>22 That includes evaluating their</p> <p>23 effectiveness and also includes monitoring</p> <p>24 their effects on the budget.</p> <p>25 In each of these three sections,</p>	<p style="text-align: right;">Page 177</p> <p>1 J. Goodman</p> <p>2 I am going to discuss lessons from research</p> <p>3 around the country, sort of guiding</p> <p>4 principles of a policy, and at the end of</p> <p>5 each section, I will talk about how those</p> <p>6 lessons can be applied to New Jersey</p> <p>7 specifically.</p> <p>8 So first I'll start with design.</p> <p>9 I think the important thing to understand</p> <p>10 on incentive design this is really a</p> <p>11 growing body of evidence in terms of what</p> <p>12 works for incentive programs. That's</p> <p>13 partially because leading research</p> <p>14 economists around the country have taken an</p> <p>15 interest in those programs and are studying</p> <p>16 them in mover depth.</p> <p>17 But it is also because states</p> <p>18 themselves are studying incentives. So as</p> <p>19 I'll mention more in the oversight section,</p> <p>20 there are 30 states that now regularly</p> <p>21 evaluate tax incentives. And part of what</p> <p>22 we are doing at Pew is reading these</p> <p>23 studies that analyze the effectiveness of</p> <p>24 the incentives and looking for common</p> <p>25 themes in those. So what I am describing</p>

<p style="text-align: right;">Page 178</p> <p>1 J. Goodman</p> <p>2 here are some of the common themes from</p> <p>3 that research.</p> <p>4 So in terms of designs, there are</p> <p>5 a number of different guiding principals.</p> <p>6 So the first three that you see on the</p> <p>7 screen all relate to the economic</p> <p>8 effectiveness of incentives.</p> <p>9 I will talk about these in more</p> <p>10 depth, but the basic idea here is which</p> <p>11 businesses receive incentives. It matters</p> <p>12 how the benefits are structured. And also</p> <p>13 in the broader situation in the economy,</p> <p>14 economic conditions matter as well.</p> <p>15 Fiscal protections are also</p> <p>16 important. In our research, one thing we</p> <p>17 have seen over and over again is the cost</p> <p>18 of specific incentive programs have</p> <p>19 increased quickly and unexpectedly. When</p> <p>20 this happens, states are often forced to</p> <p>21 make difficult choices between either</p> <p>22 raising taxes or cutting spending in other</p> <p>23 areas to make up the difference.</p> <p>24 So those kind of problems are not</p> <p>25 inevitable and fiscal protections are a way</p>	<p style="text-align: right;">Page 179</p> <p>1 J. Goodman</p> <p>2 to prevent that kind of situation.</p> <p>3 Finally, I think it is important,</p> <p>4 when you think about design, to think about</p> <p>5 decisions that you are making that affect</p> <p>6 whether you can assess these programs down</p> <p>7 the road and that's why providing clarity</p> <p>8 on the goals of this and the data necessary</p> <p>9 to ensure those goals are achieved is</p> <p>10 important.</p> <p>11 So when states design data</p> <p>12 collection, there is often provisions that</p> <p>13 discuss how data will be collected on those</p> <p>14 programs, serving a number of different</p> <p>15 functions including evaluating for a</p> <p>16 programmatic effect in the future.</p> <p>17 Q. Excuse me, with respect to</p> <p>18 providing clarity, how can you New Jersey</p> <p>19 design its tax incentive programs to make</p> <p>20 the goals of the programs clearer and to</p> <p>21 ensure that legislature uses the data it</p> <p>22 needs to achieve its incentive goals?</p> <p>23 A. I think there are a few different</p> <p>24 things to think about there. One thing and</p> <p>25 I'll discuss this in more depth later, is</p>
<p style="text-align: right;">Page 180</p> <p>1 J. Goodman</p> <p>2 New Jersey really does have multi-faceted</p> <p>3 programs. So there are different policy</p> <p>4 ideas that are built into these programs.</p> <p>5 And so you really need to sort of</p> <p>6 parse out different objectives, and so the</p> <p>7 primary programs focus on development and</p> <p>8 creating jobs. But there is also important</p> <p>9 considerations related to where those jobs</p> <p>10 are created, the types of development.</p> <p>11 So just sort of going through</p> <p>12 that list and defining what those goals are</p> <p>13 is an initial step.</p> <p>14 In terms of figuring out what</p> <p>15 data to report, I think that really needs</p> <p>16 to be an interactive process with the state</p> <p>17 agencies and with whoever is responsible</p> <p>18 for evaluating incentives. So states such</p> <p>19 as Washington State have done this, work</p> <p>20 with their evaluation office and ask them</p> <p>21 if you are going to evaluate this program</p> <p>22 in three years or five years, whatever it</p> <p>23 might be, what data do you need to do that</p> <p>24 evaluation in the future.</p> <p>25 Q. Thank you.</p>	<p style="text-align: right;">Page 181</p> <p>1 J. Goodman</p> <p>2 A. So one principal in terms of</p> <p>3 creating a higher economic impact of these</p> <p>4 programs is to target high impact firms.</p> <p>5 So that's what I mean when I say the</p> <p>6 companies that benefit. And there is a few</p> <p>7 different ideas that the research</p> <p>8 literature generally supports.</p> <p>9 Generally, you want to provide</p> <p>10 incentives to businesses that sell their</p> <p>11 products to out-of-state customers, sell</p> <p>12 their products nationally or</p> <p>13 internationally, and -- as opposed to those</p> <p>14 that provide since to a local market.</p> <p>15 If you think of a company that</p> <p>16 provides incentives -- excuse me, that sell</p> <p>17 to customers in the local market.</p> <p>18 So if you think about a company</p> <p>19 that sells to a local market, such as a</p> <p>20 retailer, supermarket, a hotel, something</p> <p>21 like that, they are competing with other</p> <p>22 New Jersey businesses or other businesses</p> <p>23 in the local economy.</p> <p>24 So if you provide incentives to</p> <p>25 say help a hotel expand, unless you have</p>

<p style="text-align: right;">Page 182</p> <p>1 J. Goodman</p> <p>2 more people who want to stay in the</p> <p>3 particular area, there is a trade-off there</p> <p>4 because another hotel is going to have</p> <p>5 fewer visitors.</p> <p>6 In addition, when states are</p> <p>7 justifying incentives, not just focused on</p> <p>8 what that company will do, but what are the</p> <p>9 broader effects, the indirect or induced</p> <p>10 effects in the local economy, so how is</p> <p>11 that company and its employees going to</p> <p>12 spend their money. So that's where some of</p> <p>13 these other principles play into it.</p> <p>14 So high wage firms, the workers</p> <p>15 have more money to spend in the local</p> <p>16 economy, that has additional benefit. If</p> <p>17 the company is a local supplier networks or</p> <p>18 money is locally owned, that money will</p> <p>19 stay in the economy longer. So companies</p> <p>20 spends its money but spends it at other New</p> <p>21 Jersey businesses.</p> <p>22 Another important principle is</p> <p>23 the maximizing the value of incentives.</p> <p>24 Here, timing really matters. to Just</p> <p>25 explain what I mean by maximizing value, if</p>	<p style="text-align: right;">Page 183</p> <p>1 J. Goodman</p> <p>2 you think about the way most tax credits</p> <p>3 work, it costs the state one dollar to</p> <p>4 provide a dollar of benefit to the company.</p> <p>5 If you offer a tax credit that costs the</p> <p>6 state a dollar, taxes it doesn't have to</p> <p>7 pay, the company gets a dollar.</p> <p>8 So in terms of maximizing value,</p> <p>9 think about what sort of changes that</p> <p>10 one-to-one ratio, either in a positive</p> <p>11 direction or potentially in a negative</p> <p>12 direction.</p> <p>13 One thing the research literature</p> <p>14 suggests is that if you offer a business</p> <p>15 executive money that's promised far out</p> <p>16 into the future, they tend to place a heavy</p> <p>17 discount on that money. So there is one</p> <p>18 study that showed if you offer business</p> <p>19 executives a dollar ten years from now,</p> <p>20 they only value it at 32 cents today. In</p> <p>21 the slide, that's -- the blue line is that</p> <p>22 discount rate. Whereas you can see once</p> <p>23 you get to here, it is only 32 cents.</p> <p>24 So whereas the research</p> <p>25 literature suggests that states should</p>
<p style="text-align: right;">Page 184</p> <p>1 J. Goodman</p> <p>2 discount some money far less, and so if you</p> <p>3 think about the state government, it is</p> <p>4 still ten years from now has to provide</p> <p>5 funding for schools and roads and</p> <p>6 healthcare and everything that a state</p> <p>7 government does, so a dollar ten years from</p> <p>8 you now is still quite valuable to a state</p> <p>9 government.</p> <p>10 So how this applies to incentive</p> <p>11 design is, all else being equal, there is a</p> <p>12 benefit to front-loading. If the program</p> <p>13 is stretching out 10 to 20 years, it may</p> <p>14 cost the state a lot of money and not</p> <p>15 provide a good bang for your buck.</p> <p>16 Q. Mr. Goodman, besides offering</p> <p>17 incentives on shorter time frames, what</p> <p>18 other ways are there to time incentives to</p> <p>19 maximize the value of return to the state?</p> <p>20 A. So here, there are ways to offer</p> <p>21 potentially benefits to businesses that</p> <p>22 really don't cost governments a lot of</p> <p>23 money, but that could be really valuable to</p> <p>24 the businesses.</p> <p>25 So this is where states look at</p>	<p style="text-align: right;">Page 185</p> <p>1 J. Goodman</p> <p>2 nonfinancial options. That could mean a</p> <p>3 work force development program that is</p> <p>4 tailored to a business' specific needs. so</p> <p>5 If that company doesn't have sort of a</p> <p>6 technical know-how to set up a program to</p> <p>7 train its workers, the state would come in</p> <p>8 to help and be very valuable to the</p> <p>9 company. But may not cost the same amount</p> <p>10 as an incentive.</p> <p>11 Many times government agencies</p> <p>12 are in the business of providing</p> <p>13 information to companies. So if you think</p> <p>14 about a company trying to decide where to</p> <p>15 locate it has to -- it's really helpful to</p> <p>16 know what are some potential sites, who</p> <p>17 owns the sites, what are the zoning laws in</p> <p>18 those sites.</p> <p>19 So to the extent economic</p> <p>20 development can offer that kind of</p> <p>21 information, it may be really cheap for</p> <p>22 them to provide and may be really useful to</p> <p>23 the companies.</p> <p>24 As I mentioned also, economic</p> <p>25 conditions make a difference. The</p>

<p style="text-align: right;">Page 186</p> <p>1 J. Goodman</p> <p>2 literature generally suggests that all else</p> <p>3 being equal, you want to target incentives</p> <p>4 to times and places where unemployment is</p> <p>5 high, and just to explain why that's the</p> <p>6 case, if you think about when unemployment</p> <p>7 is high, some share of those jobs are going</p> <p>8 to go to the unemployed work force. And so</p> <p>9 that is a lot of benefit to those people.</p> <p>10 But also is benefits to the</p> <p>11 economy in terms of per capita income, as</p> <p>12 well as to the state budget because the</p> <p>13 state budget may be providing a variety of</p> <p>14 social services to the employee,</p> <p>15 potentially as they get jobs and raise</p> <p>16 their income, they may not require any of</p> <p>17 those social services.</p> <p>18 Conversely, if you think about</p> <p>19 when unemployment is low, the literature</p> <p>20 suggests those of most jobs will be filled</p> <p>21 by in migration into the local economy. So</p> <p>22 people moving into the state. And many</p> <p>23 times, population growth isn't viewed as a</p> <p>24 negative generally, it is viewed as a</p> <p>25 positive.</p>	<p style="text-align: right;">Page 187</p> <p>1 J. Goodman</p> <p>2 But from a state's budget</p> <p>3 perspective, it is more of a mixed blessing</p> <p>4 because if more people move to the state,</p> <p>5 you have to pay for their schools, roads,</p> <p>6 et cetera.</p> <p>7 So now I'm going to turn to</p> <p>8 fiscal protections, and if you think about</p> <p>9 fiscal protections, there are two key goals</p> <p>10 that states are looking for.</p> <p>11 One is predictability from year</p> <p>12 to year. State lawmakers have to budget on</p> <p>13 an annual basis. So if you have a sudden</p> <p>14 spike in how much an incentive program is</p> <p>15 costing you, that's a problem in terms of</p> <p>16 balancing the budget.</p> <p>17 And then also there needs to be</p> <p>18 some kind of limit on a long-term basis.</p> <p>19 So that the state is making commitments</p> <p>20 that it will be able to afford in the</p> <p>21 future, and that it isn't crowding out</p> <p>22 other priorities.</p> <p>23 In practice, there are really a</p> <p>24 range of options to short of achieve those</p> <p>25 two goals. One of the strongest</p>
<p style="text-align: right;">Page 188</p> <p>1 J. Goodman</p> <p>2 protections is some kind of annual limit or</p> <p>3 cap on programmatic costs, and so caps can</p> <p>4 take different forms.</p> <p>5 In some cases, there is a</p> <p>6 requirement that incentives, be funded by</p> <p>7 up-front appropriations, so the legislature</p> <p>8 is really saying up front, before</p> <p>9 businesses qualify, this is the amount of</p> <p>10 money we will put aside for the programs.</p> <p>11 In other cases, it is sort of a limit on</p> <p>12 what economic development agency can offer.</p> <p>13 In addition to focusing on caps,</p> <p>14 there are a number of different</p> <p>15 considerations that I'll talk about in more</p> <p>16 depth. I think another principle here is</p> <p>17 when we have seen cost problems from</p> <p>18 incentives, when we have seen incentives</p> <p>19 costing --</p> <p>20 MR. WALDEN: Can I ask a</p> <p>21 question, do you mind? Can you just</p> <p>22 unpack the caps a little bit more, why</p> <p>23 you think that's important? I just</p> <p>24 want to make sure that we understand</p> <p>25 that.</p>	<p style="text-align: right;">Page 189</p> <p>1 J. Goodman</p> <p>2 THE WITNESS: What we see with</p> <p>3 incentive programs is that they often</p> <p>4 involve long-term commitments, and New</p> <p>5 Jersey certainly true in this case,</p> <p>6 where the programs stretch out 10 or 20</p> <p>7 years in the case of ERG.</p> <p>8 And a cap does a couple of things</p> <p>9 for you. One, it ensures that you're</p> <p>10 only authorizing a certain amount of</p> <p>11 money each year. So if the cap is set</p> <p>12 at 100 million dollars for each year,</p> <p>13 over ten years, you know you're not</p> <p>14 going to authorize more than a billion</p> <p>15 dollars in incentives.</p> <p>16 So it creates an upper limit in</p> <p>17 terms of the what the state's</p> <p>18 commitment is. So a state lawmaker, as</p> <p>19 they are trying to balance a budget,</p> <p>20 not just this year, but in the future,</p> <p>21 is able to say we know this program is</p> <p>22 isn't going to grow dramatically beyond</p> <p>23 our expectations.</p> <p>24 I think it is also helpful for,</p> <p>25 depending on how the cap is structured,</p>



<p style="text-align: right;">Page 190</p> <p>1 J. Goodman 2 in terms of year to year 3 predictability. So if it is on 4 authorizations and you are not exactly 5 sure when the companies will actually 6 use those monies, that money might not 7 offer the you the same year-to-year 8 predictability but it is helpful in 9 that regard as well. 10 MR. WALDEN: Thank you. 11 A. So one of the places we reach 12 interesting challenges is cases when 13 incentives are aren't limited to what 14 companies owe in tax liability. 15 That is the case with programs 16 that are refundable and programs that are 17 transferable, where a business can achieve 18 more in benefits than what they owe in 19 taxes. 20 And the reason states pursue 21 those kinds of designs is there are certain 22 types of businesses where just limiting the 23 incentive tax liability isn't that 24 valuable. You think about a start-up, if 25 they are not turning a profit yet, they</p>	<p style="text-align: right;">Page 191</p> <p>1 J. Goodman 2 might not have much in tax liability. 3 So that's why states use 4 refundability or transferability, because 5 you lack that limit related to tax 6 liability, those programs in some cases 7 have really grown. 8 So I think my message there would 9 be if you are going down that road, you 10 really have to have these other kinds of 11 protections in place. 12 Q. On that last point, what do you 13 think are some things policymakers should 14 consider when deciding on transferability 15 of tax credits? 16 A. So I think there are a few 17 different considerations on 18 transferability. 19 One question for transferability 20 is the level of benefit to the business 21 they are trying to target. So the way a 22 transferable tax credit works is the 23 business receives a credit and they decide 24 to sell it to another company. They don't 25 sell it at its full face value. They sell</p>
<p style="text-align: right;">Page 192</p> <p>1 J. Goodman 2 it somewhat less than that. 3 And so in effect, the state is 4 providing benefits to some other group of 5 companies beyond those that were directly 6 targeted by the program. So depending on 7 how large the discounts are and which 8 companies are buying the credits, I think 9 there are reasonable questions to ask about 10 is that an effective approach and does the 11 state know which companies are buying them, 12 are they companies the state wants to 13 incentivize. 14 Related to that, we have also 15 seen states focus on making sure they have 16 good data on who owns the transferable tax 17 credits, so making sure there is a good 18 tracking system in place. So as these 19 credits are sold and are redeemed on tax 20 returns, the state knows who's buying them, 21 what their status is and has data on those 22 pieces of the picture. 23 MR. WALDEN: I have another 24 question. Do I understand correctly 25 that there is some states that allow</p>	<p style="text-align: right;">Page 193</p> <p>1 J. Goodman 2 transferability and some don't? 3 THE WITNESS: Yeah, it really can 4 vary on a program-by-program basis. So 5 in many cases, there will be some 6 programs that allow transferability and 7 others ones that don't within a state, 8 and then there is some states that use 9 them more often than not. 10 MR. WALDEN: Are there any 11 studies that have been conducted to see 12 in comparing those programs that allow 13 transferability and those that don't, 14 the ultimate economic impact of 15 programs on improving the economy? 16 THE WITNESS: I haven't seen sort 17 of generalized research on that. I've 18 seen evaluations of specific programs 19 that either are transferable or not. 20 But not a generalized conclusion 21 across -- 22 MR. WALDEN: Thank you. 23 MR. CHEN: On that, are there 24 programs of which you are aware of in 25 which credits could be given to a</p>

<p style="text-align: right;">Page 194</p> <p>1 J. Goodman</p> <p>2 nonprofit corporation which by</p> <p>3 definition do not pay corporate taxes</p> <p>4 so they can sell it?</p> <p>5 THE WITNESS: I have, I do -- I</p> <p>6 think I have some programs like that</p> <p>7 where something like a utility or</p> <p>8 something like that or maybe a</p> <p>9 nonprofit building housing, the way</p> <p>10 it's valued to them and sell it, some</p> <p>11 combination of that --</p> <p>12 MR. CHEN: Do you know whether --</p> <p>13 is that a desirable situation in which</p> <p>14 tax credits should be transferable?</p> <p>15 THE WITNESS: We don't have</p> <p>16 research on that specific question and</p> <p>17 I think really with transferability,</p> <p>18 and alternatives like refundability or</p> <p>19 cash grants and other alternatives,</p> <p>20 there are a number of mechanisms the</p> <p>21 state can use to say you don't have tax</p> <p>22 liability, we still want to provide you</p> <p>23 a benefit.</p> <p>24 One question to assess would be,</p> <p>25 we could make them cash grants, we</p>	<p style="text-align: right;">Page 195</p> <p>1 J. Goodman</p> <p>2 could make them refundable credits, we</p> <p>3 could make them transferable credits.</p> <p>4 What are the pros and cons of those</p> <p>5 different programs.</p> <p>6 A. So another question related to</p> <p>7 fiscal protection is sort of the timing of</p> <p>8 incentives. This is important from a year</p> <p>9 to year predictability standpoint.</p> <p>10 In thinking about the timing</p> <p>11 incentives, it is helpful to understand the</p> <p>12 basic process and the way many of these</p> <p>13 programs function.</p> <p>14 First, there is an initial step</p> <p>15 where a state agency authorizes a company</p> <p>16 to participate in the program. And so they</p> <p>17 are saying there, you meet the basic</p> <p>18 criteria of this program, you can now</p> <p>19 participate in the program. But then the</p> <p>20 company still has to go out and meet, if it</p> <p>21 is a performance-based program, sort of</p> <p>22 commitments to create jobs, make</p> <p>23 investments, whatever those performance</p> <p>24 standards might be.</p> <p>25 So then, after it is verified</p>
<p style="text-align: right;">Page 196</p> <p>1 J. Goodman</p> <p>2 that the company hit those commitments, the</p> <p>3 state issues tax credits to the company.</p> <p>4 And then finally, there is a</p> <p>5 third step where it could even be years</p> <p>6 later before the company actually uses or</p> <p>7 redeems those credits. So that's</p> <p>8 especially likely if it is a program with</p> <p>9 carry-forward provisions that permits the</p> <p>10 company to hold these credits and use them</p> <p>11 in future years.</p> <p>12 And so where states have run into</p> <p>13 trouble in terms of predicting how much</p> <p>14 incentives will will cost year to year, it</p> <p>15 is often because these steps happen over</p> <p>16 the course of many years and on an</p> <p>17 unpredictable time frame.</p> <p>18 So whatever states can do to</p> <p>19 both shorten the time frames and make them</p> <p>20 more predictable, it is helpful for</p> <p>21 controlling the timing and the cost.</p> <p>22 One other fiscal protection is</p> <p>23 to linked incentives to the company</p> <p>24 performance and here, really sort of the</p> <p>25 worst case scenario with a particular</p>	<p style="text-align: right;">Page 197</p> <p>1 J. Goodman</p> <p>2 incentive deal with a company or project is</p> <p>3 if it costs the state a lot of money and</p> <p>4 the state doesn't get to keep the jobs or</p> <p>5 investments, the economic activity that it</p> <p>6 was expecting. And so making incentives</p> <p>7 contingent on performance can help with</p> <p>8 that.</p> <p>9 There is sort of a couple of</p> <p>10 different models for doing that. One is</p> <p>11 that states can provide incentives up front</p> <p>12 and then if the company doesn't perform,</p> <p>13 they can claw back those benefits.</p> <p>14 Providing incentives up front, as</p> <p>15 I mentioned, is particularly valuable for</p> <p>16 businesses. I think the trade-off there</p> <p>17 sometimes there are understandable reasons</p> <p>18 why a business doesn't expand in the way</p> <p>19 expected. Either there could be an</p> <p>20 economic downturn. There could be the</p> <p>21 company itself could be struggling</p> <p>22 potentially within bankruptcy.</p> <p>23 So that puts the state in a</p> <p>24 difficult position of trying to decide</p> <p>25 whether to reclaim that money and then</p>

<p style="text-align: right;">Page 198</p> <p>1 J. Goodman</p> <p>2 actually going about doing so.</p> <p>3 So then the alternative approach</p> <p>4 is to make the incentives contingent on</p> <p>5 company performance where the company is</p> <p>6 only issued the tax credits after it</p> <p>7 performs, meets its requirements, and then</p> <p>8 there is kind of a hybrid approach, and my</p> <p>9 assessment of some of New Jersey programs</p> <p>10 is that they followed the hybrid approach</p> <p>11 where the companies have to take a</p> <p>12 performance requirement before they receive</p> <p>13 incentives, but then there is a</p> <p>14 requirements related to maintaining those</p> <p>15 levels of jobs creation or investment and</p> <p>16 there are clawbacks if the companies don't</p> <p>17 maintain those commitments.</p> <p>18 Q. As a general matter, how often do</p> <p>19 states actually engage in clawback</p> <p>20 proceedings against companies?</p> <p>21 A. It is something we see with some</p> <p>22 regularity. Often there will be</p> <p>23 performance reporting on incentives that</p> <p>24 list the instances where it has been clawed</p> <p>25 back. So it is fairly common, but within</p>	<p style="text-align: right;">Page 199</p> <p>1 J. Goodman</p> <p>2 any particular incentive program, it isn't</p> <p>3 often some large share of the projects that</p> <p>4 ultimately face a claw-back. But it is</p> <p>5 something that we see.</p> <p>6 MR. WALDEN: All can I ask, were</p> <p>7 you here for the testimony of the</p> <p>8 comptroller?</p> <p>9 THE WITNESS: Yes, I was.</p> <p>10 MR. WALDEN: So one of the</p> <p>11 discussions we were having is about the</p> <p>12 whole notion of how often it is that</p> <p>13 EDA actually takes action; how many</p> <p>14 times they suspend or terminate, claw</p> <p>15 back. We will obviously try to get</p> <p>16 more data and shine some sunlight on to</p> <p>17 that.</p> <p>18 But are there other states that</p> <p>19 have a separate, independent authority</p> <p>20 that's kind of responsible, taking</p> <p>21 compliance piece of it out of the</p> <p>22 agency? Because in some ways, it has</p> <p>23 been described to us that EDA, in some</p> <p>24 ways, is kind of like the business</p> <p>25 cheerleader, they are trying to bring</p>
<p style="text-align: right;">Page 200</p> <p>1 J. Goodman</p> <p>2 business to the state. That's great.</p> <p>3 That's really important.</p> <p>4 But are there any other states</p> <p>5 that have a separate enforcement arm</p> <p>6 that says once the closing is done,</p> <p>7 once the award has been made, we have</p> <p>8 got it from here to make sure that the</p> <p>9 taxpayers are getting the benefit of</p> <p>10 the bargain?</p> <p>11 THE WITNESS: Yeah, I think we</p> <p>12 see a range of different models. So</p> <p>13 often with tax programs, tax incentive</p> <p>14 programs, the tax agency also has a</p> <p>15 role in verifying the data. They are</p> <p>16 the ones that are ultimately the tax</p> <p>17 returns are submitted to them and so it</p> <p>18 varies to what extent an economic</p> <p>19 development agency is engaged in</p> <p>20 compliance versus department of revenue</p> <p>21 or tax agency.</p> <p>22 There are also sometimes</p> <p>23 processes for independent audits or</p> <p>24 other kinds of verification processes.</p> <p>25 So I do think it is a range of</p>	<p style="text-align: right;">Page 201</p> <p>1 J. Goodman</p> <p>2 models that are out there and it's not</p> <p>3 unusual to have any economic</p> <p>4 development agency doing that work, but</p> <p>5 also not unusual to have these other</p> <p>6 agencies as well.</p> <p>7 BY MR. QUINONES:</p> <p>8 Q. This is a follow-up on that, are</p> <p>9 there any studies on which models are more</p> <p>10 effective?</p> <p>11 A. I have certainly seen in</p> <p>12 different states' different assessments of</p> <p>13 which model to use. I wouldn't necessarily</p> <p>14 be able to generalize in terms of a</p> <p>15 principle.</p> <p>16 So I thought it would be helpful</p> <p>17 to sort of show, give an example how these</p> <p>18 different design principles fit together in</p> <p>19 a particular incentive program.</p> <p>20 So Minnesota's job creation fund</p> <p>21 is one of their primary job creation</p> <p>22 incentives, somewhat analogous to Grow NJ</p> <p>23 for Minnesota. And many of these</p> <p>24 principles work in various ways. First</p> <p>25 targeted to high impact businesses. The</p>

<p style="text-align: right;">Page 202</p> <p>1 J. Goodman</p> <p>2 industries that it targets are ones that</p> <p>3 generally sell their products to</p> <p>4 out-of-state customers and the state also</p> <p>5 exercises discretion on which businesses</p> <p>6 qualify. So that's potentially a way for</p> <p>7 them to be saying, this particular company</p> <p>8 has local suppliers that have a greater</p> <p>9 economic impact, something like that.</p> <p>10 It is relatively front-loaded.</p> <p>11 In Minneapolis, St. Paul that metro area</p> <p>12 companies can only earn incentives for five</p> <p>13 years. Elsewhere in the state, they can</p> <p>14 earn incentives for seven years. And there</p> <p>15 are greater benefits, as that example</p> <p>16 shows, outside of the Minneapolis St. Paul</p> <p>17 area and relaxed qualification standards.</p> <p>18 so That relates to targeting their</p> <p>19 incentives based on economic conditions.</p> <p>20 Finally, this program is funded</p> <p>21 by legislative appropriations. Money is</p> <p>22 actually put into a fund up front and then</p> <p>23 the economic development agency is limited</p> <p>24 based on the money available in terms of</p> <p>25 how much the incentives it offers and that</p>	<p style="text-align: right;">Page 203</p> <p>1 J. Goodman</p> <p>2 provides a measure of protection for the</p> <p>3 state budget.</p> <p>4 So applying these principles to</p> <p>5 New Jersey --</p> <p>6 MR. WALDEN: I am sorry, I have</p> <p>7 one question for you. I don't know if</p> <p>8 you know the Minnesota set-up well</p> <p>9 enough to be able to answer this</p> <p>10 question, but is there a mechanism that</p> <p>11 they use -- and I can imagine things</p> <p>12 like an independent board, where you</p> <p>13 have economists and tax specialists --</p> <p>14 but is there a process that they have</p> <p>15 implemented to try to make sure they</p> <p>16 remove political considerations and</p> <p>17 political clout from any decision</p> <p>18 making over who gets what tax</p> <p>19 incentives?</p> <p>20 THE WITNESS: Actually some of my</p> <p>21 subsequent slides will speak to this.</p> <p>22 I don't know exactly on Minnesota, but</p> <p>23 what we have seen is having a range of</p> <p>24 perspectives to make those decisions.</p> <p>25 One approach that states have</p>
<p style="text-align: right;">Page 204</p> <p>1 J. Goodman</p> <p>2 used to serve exactly the purpose you</p> <p>3 are describing.</p> <p>4 So for example, there is a</p> <p>5 program in North Carolina, where there</p> <p>6 is a mix of executive branch appointees</p> <p>7 and legislative appointees. There is</p> <p>8 also a mix of people with economic</p> <p>9 background and more of a budget</p> <p>10 perspective.</p> <p>11 So what you are trying to do</p> <p>12 there is have different voices in the</p> <p>13 room to make those decisions, both</p> <p>14 because you think that might lead to</p> <p>15 better decisions, but also to make sure</p> <p>16 there is checks on any one person</p> <p>17 making those decisions.</p> <p>18 MR. WALDEN: Thank you.</p> <p>19 A. So I think there are a number of</p> <p>20 opportunities to improve the design of the</p> <p>21 incentives.</p> <p>22 First, I mentioned ERG offers</p> <p>23 incentives for potentially up to 20 years.</p> <p>24 The literature would generally suggest that</p> <p>25 the state could potentially spend less on</p>	<p style="text-align: right;">Page 205</p> <p>1 J. Goodman</p> <p>2 incentives, but have the same impact if it</p> <p>3 shortens some of those time frames.</p> <p>4 New Jersey incentives are</p> <p>5 generally many of them focus on businesses</p> <p>6 that sell to out-of-the-state customers,</p> <p>7 but there are exceptions to that.</p> <p>8 There are retailers and hotels</p> <p>9 that qualify under ERG. The urban</p> <p>10 enterprise zone also offers benefits to</p> <p>11 retailers. So there I would say there</p> <p>12 could be a specific policy rationale for</p> <p>13 offering the incentives to those kinds of</p> <p>14 businesses if you think about something</p> <p>15 like offering incentives to grocery stores</p> <p>16 locate in a food desert, that would be a</p> <p>17 possible rationale for doing something like</p> <p>18 this.</p> <p>19 But there should be at least a</p> <p>20 clear rationale if you are going to in that</p> <p>21 direction.</p> <p>22 Then, there are also</p> <p>23 opportunities potentially to fine-tune</p> <p>24 targeting to distressed areas. This is</p> <p>25 something that New Jersey does right now.</p>

<p style="text-align: right;">Page 206</p> <p>1 J. Goodman</p> <p>2 Obviously, just with the example of Camden,</p> <p>3 there are a lot of incentives going to</p> <p>4 businesses in distressed cities.</p> <p>5 The Rutgers University Bloustein</p> <p>6 School did a study of New Jersey's</p> <p>7 incentives last year and one thing they</p> <p>8 pointed out on the residential side of ERG</p> <p>9 was that there was a lot of variation where</p> <p>10 some distressed cities were getting a lot</p> <p>11 of projects with a lot of incentives.</p> <p>12 Other equally distressed cities were</p> <p>13 receiving less in incentives.</p> <p>14 So I think that's where you could</p> <p>15 think about how are we targeting distressed</p> <p>16 areas, is there a better way to do that.</p> <p>17 I think related to that, another</p> <p>18 way another key question is, are the people</p> <p>19 in those areas benefiting from the</p> <p>20 incentives. That would sort of be the</p> <p>21 underlying goal.</p> <p>22 Then in terms of fiscal</p> <p>23 protections, New Jersey could establish</p> <p>24 more consistent fiscal protections for the</p> <p>25 state's incentives. There are certainly</p>	<p style="text-align: right;">Page 207</p> <p>1 J. Goodman</p> <p>2 some fiscal protections such as company or</p> <p>3 project-specific limits in place now. But</p> <p>4 in the current generation of incentives,</p> <p>5 there is no aggregate cap that creates that</p> <p>6 overall net.</p> <p>7 Finally, as I mentioned, there</p> <p>8 may be a goals that you have set up so you</p> <p>9 are able to evaluate them in the future.</p> <p>10 My second section is on</p> <p>11 determined design implementation. So how</p> <p>12 do state agencies take what policymakers</p> <p>13 put in statute and then operate the</p> <p>14 programs.</p> <p>15 In here, I think there are three</p> <p>16 key tasks for administering incentives.</p> <p>17 First is sort of a promotional task;</p> <p>18 publicizing the programs, explaining the</p> <p>19 programs to potential businesses that might</p> <p>20 qualify for them.</p> <p>21 Then, once companies apply, state</p> <p>22 agencies have to determine whether they are</p> <p>23 eligible or not. And then especially with</p> <p>24 sort of performance-based model, they have</p> <p>25 to make sure that they are only awarding</p>
<p style="text-align: right;">Page 208</p> <p>1 J. Goodman</p> <p>2 incentives to businesses that meet their</p> <p>3 commitments, meet their performance</p> <p>4 obligations.</p> <p>5 In digging through what these</p> <p>6 administrative tasks look like, one of the</p> <p>7 key decisions states make is whether or to</p> <p>8 what extent incentives are discretionary</p> <p>9 and this does kind of get a little bit back</p> <p>10 to the design of the programs. But at one</p> <p>11 spectrum, we have some programs that</p> <p>12 essentially function as entitlements.</p> <p>13 There are specific criteria in</p> <p>14 law. Every single business that meets</p> <p>15 those criteria gets the incentive, and with</p> <p>16 those kinds of programs, sometimes</p> <p>17 companies simply file their tax returns.</p> <p>18 They say we did this activity. Potentially</p> <p>19 that could be subject to an audit to verify</p> <p>20 that. But otherwise, that's sort of all</p> <p>21 they have to do to get the incentive.</p> <p>22 At the other sort of extreme end</p> <p>23 of the spectrum, you have programs that are</p> <p>24 highly discretionary where state officials</p> <p>25 or some state body have broadly determined</p>	<p style="text-align: right;">Page 209</p> <p>1 J. Goodman</p> <p>2 which benefits, which businesses get</p> <p>3 incentives. There, the administrative role</p> <p>4 is much larger because you have to be able</p> <p>5 to weigh these different businesses, figure</p> <p>6 out which ones are good or best for your</p> <p>7 economy.</p> <p>8 So there are pros and cons in</p> <p>9 different directions. In thinking this</p> <p>10 through, one of the key questions is</p> <p>11 whether you are set up to make those good</p> <p>12 decisions if you are using discretionary</p> <p>13 programs.</p> <p>14 And I would sort of place Grow NJ</p> <p>15 and ERG in the middle of spectrum where</p> <p>16 there is a lot of criteria that are</p> <p>17 involved, but also also an element where</p> <p>18 the state is making judgment calls in terms</p> <p>19 of whether companies meet those criteria</p> <p>20 and assessing proposals.</p> <p>21 Q. Are there best practices in</p> <p>22 assessing how discretion should be used</p> <p>23 when they are making those judgment calls?</p> <p>24 A. I think there are a number of</p> <p>25 different things you might look at. One</p>

<p style="text-align: right;">Page 210</p> <p>1 J. Goodman</p> <p>2 thing is to think back to those principles</p> <p>3 of design and sort of apply those ideas to</p> <p>4 specific businesses.</p> <p>5 So you want to target high impact</p> <p>6 businesses. You want to target businesses</p> <p>7 that will grow your economy. They often</p> <p>8 have some kind of due diligence process</p> <p>9 where they're checking -- these companies</p> <p>10 have received incentives before, in our</p> <p>11 state or other states, have they followed</p> <p>12 through on their commitments? What are --</p> <p>13 do we think they are good for our state</p> <p>14 economy.</p> <p>15 So that kind of due diligence as</p> <p>16 well as sort of assessments of potential</p> <p>17 impact is part of the process.</p> <p>18 So this example is just another</p> <p>19 case of showing how states can have a broad</p> <p>20 perspective, broad range of voices in</p> <p>21 making decisions about discretionary</p> <p>22 incentives.</p> <p>23 And to the Massachusetts Life</p> <p>24 Sciences Board, under live sciences tax</p> <p>25 credit, which is one of the state's major</p>	<p style="text-align: right;">Page 211</p> <p>1 J. Goodman</p> <p>2 tax credit programs, the one thing they</p> <p>3 decided or emphasized was having a degree</p> <p>4 of technical expertise in making these</p> <p>5 decisions. So they have state official,</p> <p>6 leader of academic institutions making</p> <p>7 decisions, but they also have people with</p> <p>8 expertise.</p> <p>9 So a researcher involved in</p> <p>10 a life sciences business, so if you really</p> <p>11 have a discretionary program, you need</p> <p>12 someone to assess whether the business</p> <p>13 plans make sence, whether they are likely</p> <p>14 to succeed or not.</p> <p>15 Q. On that life sciences board in</p> <p>16 Massachusetts, what benefits do you see to</p> <p>17 having a board like that that provides a</p> <p>18 range of views in evaluating whether to</p> <p>19 grant the tax incentives?</p> <p>20 A. So the first thing I would say is</p> <p>21 we haven't done the research that</p> <p>22 demonstrates if that approach works better.</p> <p>23 I think the logic behind it is twofold.</p> <p>24 One is to bring different</p> <p>25 perspectives to bear because those</p>
<p style="text-align: right;">Page 212</p> <p>1 J. Goodman</p> <p>2 perspectives are valuable in making</p> <p>3 decisions, and so that includes people with</p> <p>4 a budget perspective who might say, you</p> <p>5 know, these incentives are -- we are in a</p> <p>6 budget shortfall right now, we can't</p> <p>7 provide quite as much incentives, we need</p> <p>8 to be really selective about which</p> <p>9 companies we offer incentives right now</p> <p>10 because of what's going on with the budget.</p> <p>11 And also the technical expertise</p> <p>12 I mentioned from some of the people who can</p> <p>13 say this company is creating this new</p> <p>14 product, but I have expertise to say that</p> <p>15 product is an already out there, someone</p> <p>16 else is doing it, and I don't think their</p> <p>17 plans are going to come to fruition.</p> <p>18 I think the other advantage that</p> <p>19 they see and the reason they do this having</p> <p>20 more business person perspective, make sure</p> <p>21 that, you know, it isn't too much one</p> <p>22 person making the decision and so you do</p> <p>23 have sort of a safeguard there built into</p> <p>24 the program.</p> <p>25 Q. These boards exist at what state</p>	<p style="text-align: right;">Page 213</p> <p>1 J. Goodman</p> <p>2 of the process so that they are influencing</p> <p>3 the decision making?</p> <p>4 A. They are, generally speaking,</p> <p>5 assessing applications and, generally,</p> <p>6 there is the staff of an economic</p> <p>7 development agency or whatever agency is</p> <p>8 making these decisions who has a -- it is</p> <p>9 the first stop where they are probably</p> <p>10 working with the company to make sure their</p> <p>11 proposal follows the guidelines of the</p> <p>12 program.</p> <p>13 But then that proposal is brought</p> <p>14 before a board who has ultimate the weight</p> <p>15 to say, yes, we are offering incentives for</p> <p>16 this project to come.</p> <p>17 Then a second step in</p> <p>18 implementation or another step in the</p> <p>19 implementation is making sure that</p> <p>20 businesses have followed through on program</p> <p>21 requirements, that they have met their</p> <p>22 commitments. And what I want to talk about</p> <p>23 here is why that work can get complicated.</p> <p>24 So it might sound simple to count</p> <p>25 the number of jobs and how many created,</p>

<p style="text-align: right;">Page 214</p> <p>1 J. Goodman</p> <p>2 but there are -- and jobs, there is just</p> <p>3 one example of the kind of things that</p> <p>4 businesses are required to do under these</p> <p>5 programs.</p> <p>6 But even something sounds simple</p> <p>7 like jobs, there can be a lot of different</p> <p>8 considerations. Companies can have</p> <p>9 part-time workers. They generally always</p> <p>10 have some vacancies they are trying to</p> <p>11 fill. They have contractors, they have</p> <p>12 subsidiaries. They might have multiple</p> <p>13 locations within one state and are moving</p> <p>14 people from location to location or perhaps</p> <p>15 people are split between locations.</p> <p>16 So what is important in order to</p> <p>17 allow administrative agencies to verify</p> <p>18 performance is to have clear definitions of</p> <p>19 what you mean by things like jobs so you</p> <p>20 know that companies are following through</p> <p>21 and businesses also have to understand</p> <p>22 these definitions.</p> <p>23 MR. WALDEN: Can I just ask you</p> <p>24 to unpack one thing for me. I have to</p> <p>25 apologize because we have to be done</p>	<p style="text-align: right;">Page 215</p> <p>1 J. Goodman</p> <p>2 with you by 2:15 in order to make the</p> <p>3 schedule.</p> <p>4 There is one thing important that</p> <p>5 was said by the comptroller which is --</p> <p>6 what I don't understand is tracking</p> <p>7 jobs does seem complicated because, OK,</p> <p>8 one person leaves, maybe another person</p> <p>9 is hired, that's what the comptroller</p> <p>10 said about people that are hired in the</p> <p>11 fourth quarter, although we can all</p> <p>12 imagine other reasons that might</p> <p>13 happen.</p> <p>14 Are interest programs that simply</p> <p>15 say, listen, you have to keep your</p> <p>16 headcount at all times above "X." Your</p> <p>17 headcount is "X," we want you to be at</p> <p>18 "Y," there is no job moving around the</p> <p>19 state. You have got to keep these jobs</p> <p>20 in and you have to be at that level.</p> <p>21 I think a simple program that way</p> <p>22 so you are not measuring jobs, you are</p> <p>23 just measuring headcount and it's</p> <p>24 easier to measure that or is that being</p> <p>25 naive?</p>
<p style="text-align: right;">Page 216</p> <p>1 J. Goodman</p> <p>2 THE WITNESS: So I think -- it</p> <p>3 would sort of depend on the design of</p> <p>4 the program. So if that's what you are</p> <p>5 going for, that would be a potential</p> <p>6 option.</p> <p>7 I think there would still be a</p> <p>8 number of questions related to how you</p> <p>9 are accounting for part-time workers,</p> <p>10 something like that, if there are</p> <p>11 subsidiaries, and you would also been</p> <p>12 need the data to make that assessment.</p> <p>13 So generally, there is some kind</p> <p>14 of regular performance reporting to</p> <p>15 verify job creation and so -- this</p> <p>16 relates to the next thing I'm going to</p> <p>17 talk about, sort of what is the data</p> <p>18 source that allows you to have that</p> <p>19 number and to verify it would be the</p> <p>20 question. But it certainly would be</p> <p>21 one option as well.</p> <p>22 A. So when states do seek that kind</p> <p>23 of performance data to verify companies,</p> <p>24 they can get it from a number of different</p> <p>25 sources.</p>	<p style="text-align: right;">Page 217</p> <p>1 J. Goodman</p> <p>2 One approach is to use existing</p> <p>3 state administrative records. These are</p> <p>4 records not related to a specific program.</p> <p>5 This is something the state is already</p> <p>6 collecting for another business purpose.</p> <p>7 So one of the key example here is</p> <p>8 unemployment insurance records, where</p> <p>9 businesses are regularly reporting their</p> <p>10 reports on the wages that they are paying</p> <p>11 to employees as part of the unemployment</p> <p>12 insurance system, and so this is something</p> <p>13 that states often use to try to verify job</p> <p>14 counts, and the advantage of using those</p> <p>15 kinds of records is that it is something</p> <p>16 that businesses are familiar with. It's</p> <p>17 already ideally reported consistently, it's</p> <p>18 something the state is already collecting.</p> <p>19 The challenge there is that</p> <p>20 information is generally provided to the</p> <p>21 Department of Labor. So there has to be</p> <p>22 some kind of information sharing agreement</p> <p>23 to get it to whatever agency is</p> <p>24 administering the program.</p> <p>25 So then what states have also</p>

<p style="text-align: right;">Page 218</p> <p>1 J. Goodman</p> <p>2 done, if the state administrative records</p> <p>3 aren't sufficient, they required reporting</p> <p>4 specific to a incentive program. So put in</p> <p>5 specific reporting requirements.</p> <p>6 So there, you really have to make</p> <p>7 sure that businesses are providing</p> <p>8 information in a consistent way. They</p> <p>9 understand the requirements, that the</p> <p>10 agency is getting the information that</p> <p>11 needs.</p> <p>12 And then as I mentioned earlier,</p> <p>13 there can also be going directly to the</p> <p>14 source through audits, site visits, other</p> <p>15 provisions of that nature.</p> <p>16 In this performance reporting, I</p> <p>17 think it is worth noting that monitoring</p> <p>18 company performance is one of the key goals</p> <p>19 but not the only value of performance</p> <p>20 reporting, and it's not the only thing to</p> <p>21 be thinking about when you are designing</p> <p>22 reporting requirements.</p> <p>23 Generally, economic development</p> <p>24 agencies or the administering agency are</p> <p>25 also then making some of this information</p>	<p style="text-align: right;">Page 219</p> <p>1 J. Goodman</p> <p>2 publicly available and that can offer sort</p> <p>3 of a check in on how these programs are</p> <p>4 working.</p> <p>5 So a performance report might say</p> <p>6 these are the companies we have authorized</p> <p>7 incentives to. This is the number of jobs</p> <p>8 they promised to create, this is the number</p> <p>9 they have created so far, and that</p> <p>10 information helps inform both lawmakers and</p> <p>11 the public as well.</p> <p>12 Q. What is the some of the best ways</p> <p>13 in which states are monitoring company</p> <p>14 performance; that is, if the state isn't</p> <p>15 getting the benefit of the tax break they</p> <p>16 gave the company?</p> <p>17 A. So I think,there are an number of</p> <p>18 things you can mention. When -- I think</p> <p>19 having a verifiable data source that's</p> <p>20 established is really an important part of</p> <p>21 it, where you say you have to -- this is</p> <p>22 the data we are going to use to measure job</p> <p>23 creation in this particular program and</p> <p>24 this is what job creation means in this</p> <p>25 particular program, and that way, everyone</p>
<p style="text-align: right;">Page 220</p> <p>1 J. Goodman</p> <p>2 understands when we say that this program</p> <p>3 created 5,000 jobs, they know that what</p> <p>4 means.</p> <p>5 So one example of that was in the</p> <p>6 state of Virginia where they had nine</p> <p>7 different agencies that administered</p> <p>8 different incentive programs and those</p> <p>9 agencies got together and looked at their</p> <p>10 different statutes governing these programs</p> <p>11 and realized they had different definitions</p> <p>12 in law in Virginia of what a job even</p> <p>13 meant.</p> <p>14 So they did a process to make a</p> <p>15 consistent definition that they would use</p> <p>16 for performance reporting purposes, so that</p> <p>17 they -- when the state of Virginia says</p> <p>18 that we create 100 jobs in this program,</p> <p>19 100 jobs in that program, it means the</p> <p>20 exact same thing.</p> <p>21 Q. Thank you.</p> <p>22 A. So then in terms of questions for</p> <p>23 implementation of New Jersey incentives,</p> <p>24 here, there is certainly others who are in</p> <p>25 a better position to weigh in on specific</p>	<p style="text-align: right;">Page 221</p> <p>1 J. Goodman</p> <p>2 details of how New Jersey is administering</p> <p>3 incentives, including the comptroller and</p> <p>4 EDA obviously.</p> <p>5 Let me make a few general points.</p> <p>6 One question is the three tasks I laid out</p> <p>7 at the beginning, promoting the programs,</p> <p>8 weighing applications, and then verifying</p> <p>9 performance, how is the state doing on each</p> <p>10 of those things. And one place to look is</p> <p>11 obviously the comptroller study. I would</p> <p>12 also point you to the Rutgers study and one</p> <p>13 point they made in the Rutgers study is for</p> <p>14 ERG, companies are supposed to demonstrate</p> <p>15 a financing gap.</p> <p>16 So there is some quantitative</p> <p>17 analysis of this is a development that</p> <p>18 needed these incentives in order to go</p> <p>19 forward. And what the Rutgers studies</p> <p>20 showed is for some projects it received</p> <p>21 were authorized for ERG benefits, the</p> <p>22 incentive appeared to make a big difference</p> <p>23 in terms of increasing the return on</p> <p>24 investment from that development. Other</p> <p>25 places, it made smaller difference.</p>



<p style="text-align: right;">Page 222</p> <p>1 J. Goodman</p> <p>2 The Rutgers researchers couldn't</p> <p>3 see what standard was being applied, in</p> <p>4 terms of what the financing gap has to be</p> <p>5 in order for a program to go forward.</p> <p>6 That's one thing to look at.</p> <p>7 I think in statute, having a</p> <p>8 performance-based model, as New Jersey</p> <p>9 does, is a strength of the program.</p> <p>10 When I talk about</p> <p>11 performance-based incentives around the</p> <p>12 country, one example I use is Revel Casino</p> <p>13 in Atlantic City. You have a case where</p> <p>14 the state authorized incentives, but the</p> <p>15 casino went bankrupt and the state didn't</p> <p>16 have to pay out any of that money.</p> <p>17 So with other programs, in other</p> <p>18 states, you wouldn't have had that</p> <p>19 situation and not only would that have been</p> <p>20 sort of an economic concern, it would also</p> <p>21 have been a budget concern.</p> <p>22 With that being said, the</p> <p>23 performance-based model has to be working</p> <p>24 well and the state has to be able to verify</p> <p>25 the companies are being met.</p>	<p style="text-align: right;">Page 223</p> <p>1 J. Goodman</p> <p>2 Q. You touched on jobs, so let's go</p> <p>3 to the next slide.</p> <p>4 A. Sure. So finally, I'm going to</p> <p>5 talk about oversight of incentives and let</p> <p>6 me hit on two things specifically when it</p> <p>7 comes to oversight.</p> <p>8 When I'm talking about oversight,</p> <p>9 first, there is a matter of measuring the</p> <p>10 economic impact of these programs. And so</p> <p>11 focusing on a programmatic level and saying</p> <p>12 are these programs achieving their goals,</p> <p>13 how well are they working. And then to</p> <p>14 compliment what I discussed earlier on</p> <p>15 fiscal protections, there is also the</p> <p>16 matter of protecting the future budget</p> <p>17 commitments, fiscal protection, making sure</p> <p>18 that incentives aren't costing more than</p> <p>19 intended, partially a matter of the design</p> <p>20 of the programs, but it is also a matter of</p> <p>21 the data, do we know on how much these</p> <p>22 programs will cost in the future.</p> <p>23 MR. WALDEN: While you are</p> <p>24 pausing, can I jump in this a question.</p> <p>25 MR. QUINONES: You gave the</p>
<p style="text-align: right;">Page 224</p> <p>1 J. Goodman</p> <p>2 warning of 2:15.</p> <p>3 MR. WALDEN: I know. One of the</p> <p>4 finding of the comptroller's report is</p> <p>5 the EDA is not measuring performance</p> <p>6 against actual performance data. They</p> <p>7 are not -- sorry, measuring whether</p> <p>8 it's achieving their goals against</p> <p>9 what's really happening in the real</p> <p>10 world.</p> <p>11 Is that a common problem among</p> <p>12 states or is New Jersey unusual in that</p> <p>13 way?</p> <p>14 THE WITNESS: So when we -- we</p> <p>15 read tax incentive evaluations from</p> <p>16 around the country. These are reports</p> <p>17 that some office does, digging into the</p> <p>18 details of an incentive program. And</p> <p>19 one thing you see all the time in those</p> <p>20 kind of reports is an assessment of</p> <p>21 whether the state is adequately</p> <p>22 verifying whether this incentive met</p> <p>23 their commitment.</p> <p>24 So it is really a common</p> <p>25 challenge around the country, and so it</p>	<p style="text-align: right;">Page 225</p> <p>1 J. Goodman</p> <p>2 gets back to the challenges that</p> <p>3 counting jobs and how is the state</p> <p>4 independently checking that, does it</p> <p>5 have good data. So it is a problem</p> <p>6 that a lot of states are dealing with.</p> <p>7 And states try to incremental</p> <p>8 implements to get better data, so they</p> <p>9 can have the assurances that the</p> <p>10 programs are doing what they thought</p> <p>11 they are doing.</p> <p>12 MR. WALDEN: What do you think is</p> <p>13 class if you know? What state is best</p> <p>14 in class on this particular point?</p> <p>15 THE WITNESS: I don't think our</p> <p>16 research necessarily points to best in</p> <p>17 class in that area.</p> <p>18 So it really depends on sort of</p> <p>19 the goals of the program. But I would</p> <p>20 point to the state administrative</p> <p>21 records as being a valuable source of</p> <p>22 information, and so looking at this</p> <p>23 Department of Labor, that Department of</p> <p>24 Labor data as source of jobs data, that</p> <p>25 would be one place states could</p>

<p style="text-align: right;">Page 226</p> <p>1 J. Goodman</p> <p>2 certainly look there.</p> <p>3 A. So we have seen -- valuation --</p> <p>4 BY MR. QUINONES:</p> <p>5 Q. You can skip ahead on this.</p> <p>6 Q. Sure. So states need to be</p> <p>7 coming up with a plan to regularly evaluate</p> <p>8 the effectiveness of their incentives and</p> <p>9 that requires them to make a number of</p> <p>10 decisions about who will conduct the</p> <p>11 evaluations, what programs we are looking</p> <p>12 at, what information the analysis will</p> <p>13 include, and so those are sort of the key</p> <p>14 decision points.</p> <p>15 So in thinking through those</p> <p>16 decisions, I think what's important is to</p> <p>17 understand what a high quality evaluation</p> <p>18 looks like and usually an evaluation starts</p> <p>19 with some descriptive information that lays</p> <p>20 out the history of the incentive program,</p> <p>21 its goals, how it changes over time, those</p> <p>22 kind of things, and then it includes an</p> <p>23 assessment of the incentive's design and</p> <p>24 administration.</p> <p>25 So many of the things I talked</p>	<p style="text-align: right;">Page 227</p> <p>1 J. Goodman</p> <p>2 about in the first two sections of the</p> <p>3 program, you might see in an evaluation.</p> <p>4 It might say, we are not targeting the</p> <p>5 right kind of businesses for this program</p> <p>6 to maximize the economic impact. Or the</p> <p>7 agency that administers the program doesn't</p> <p>8 have the data it needs to verify job</p> <p>9 creation. Those are the kind of things you</p> <p>10 see in evaluations.</p> <p>11 So then there is also</p> <p>12 quantitative analysis? How many jobs were</p> <p>13 created? What was the impact on the</p> <p>14 budget? How did this affect the</p> <p>15 economy? And then the finally, that</p> <p>16 evaluation synthesizes that information</p> <p>17 into a set of policy recommendations.</p> <p>18 So one of the key decision points</p> <p>19 is who should conduct this analysis, who is</p> <p>20 positioned to provide all the types of</p> <p>21 information I just mentioned. And here</p> <p>22 states have used a range of approaches.</p> <p>23 In some cases, they are</p> <p>24 legislative staff, legislative audit</p> <p>25 offices, legislative program evaluation</p>
<p style="text-align: right;">Page 228</p> <p>1 J. Goodman</p> <p>2 offices, legislative fiscal offices.</p> <p>3 In other cases, states are</p> <p>4 working with outside entities such as</p> <p>5 academic institutions or private</p> <p>6 consultants, and then finally, in other</p> <p>7 cases, it might be an economic -- excuse</p> <p>8 me, an executive branch agency.</p> <p>9 And we at Pew don't have one</p> <p>10 specific recommendation that applies to all</p> <p>11 things. Instead, you want a state that</p> <p>12 balances a number of considerations.</p> <p>13 First, some state agencies aren't</p> <p>14 going to have authorization to make</p> <p>15 policy-relevant conclusions. So that's an</p> <p>16 important piece of that. And then you also</p> <p>17 want relevant expertise, both at the</p> <p>18 performance audit side of things that we</p> <p>19 heard about earlier today. So digging into</p> <p>20 the details of the program, but also</p> <p>21 quantitative side of measuring economic</p> <p>22 impact. And then finally, it is crucial to</p> <p>23 have a nonpartial perspective.</p> <p>24 So what we see around the country</p> <p>25 is not always in the case in the states</p>	<p style="text-align: right;">Page 229</p> <p>1 J. Goodman</p> <p>2 that there is one office that checks all</p> <p>3 these boxes, and so in those cases, it</p> <p>4 could be an office that builds capacity in</p> <p>5 one of these areas that it doesn't have</p> <p>6 now, such as measuring economic impact, and</p> <p>7 it could be creating an evaluation process</p> <p>8 that has a couple of different offices with</p> <p>9 different discrete roles in the evaluation</p> <p>10 process.</p> <p>11 Then moving on to the data side,</p> <p>12 as I mentioned, it is important to have</p> <p>13 data to supplement fiscal protections and</p> <p>14 there a couple of kinds of data you are</p> <p>15 looking for. One is data on the long-term</p> <p>16 commitment; how much are we committed to</p> <p>17 the programs, what the state maximum</p> <p>18 exposure to these programs, and the other</p> <p>19 is specific estimates of how much they will</p> <p>20 cost on an annual basis that can be used</p> <p>21 for budget purposes.</p> <p>22 New Jersey is already releasing</p> <p>23 some of this information. This chart is</p> <p>24 from a -- something the EDA submitted to</p> <p>25 the Office of Legislative Services from</p>

<p style="text-align: right;">Page 230</p> <p>1 J. Goodman</p> <p>2 last year's budget process and it has been</p> <p>3 in previous budget processes where the</p> <p>4 Office of Legislative Services asks</p> <p>5 questions about the state's future</p> <p>6 commitment on incentives and EDA provides</p> <p>7 information here.</p> <p>8 EDA has described these numbers</p> <p>9 as the maximum amount of state resources</p> <p>10 that is required per program, but also</p> <p>11 notes that the actual cost may be lower</p> <p>12 because some companies may not meet the</p> <p>13 performance requirements.</p> <p>14 Q. You have read the comptroller's</p> <p>15 reports, audit of the EDA. And it makes</p> <p>16 reference to EDA having approved nearly 11</p> <p>17 billion in tax credits for a thousand</p> <p>18 profits as of February 2018.</p> <p>19 What's your view on whether</p> <p>20 effective oversight should include</p> <p>21 reviewing both current tax benefits, as</p> <p>22 well as future financial commitments in New</p> <p>23 Jersey?</p> <p>24 A. So New Jersey, as was mentioned</p> <p>25 earlier, in 2013, did this revision of</p>	<p style="text-align: right;">Page 231</p> <p>1 J. Goodman</p> <p>2 their incentives where they made Grow NJ</p> <p>3 the sort of programs that are open to</p> <p>4 companies currently going forward at that</p> <p>5 point.</p> <p>6 But because of the long timeframe</p> <p>7 for the incentives, there are major</p> <p>8 commitments to earlier generations of</p> <p>9 programs. This is something we see all the</p> <p>10 time around a country when states do have</p> <p>11 programs that last, five, ten, twenty</p> <p>12 years, whatever it might be. From a budget</p> <p>13 standpoint it matters just as much -- money</p> <p>14 that was committed to the previous</p> <p>15 generation of programs that still can</p> <p>16 affect the state's budget as money that is</p> <p>17 from the current generation of programs.</p> <p>18 So when you are thinking about</p> <p>19 cost protections, when you are thinking</p> <p>20 about having information that lawmakers can</p> <p>21 use, including that full picture is</p> <p>22 crucially important.</p> <p>23 Q. I will follow quickly and then I</p> <p>24 think Mr. Walden wants to follow up as</p> <p>25 well. It's a true commitment, so with</p>
<p style="text-align: right;">Page 232</p> <p>1 J. Goodman</p> <p>2 respect to the comptroller's report, the</p> <p>3 reference to 11 billion dollars is a true</p> <p>4 financial commitment of the state?</p> <p>5 A. Yes, I think you have to maybe</p> <p>6 dig into that number to know whether are</p> <p>7 there instances there a company can</p> <p>8 actually still potentially earn that money</p> <p>9 because their benefits have expired or they</p> <p>10 don't have an opportunity to use it for</p> <p>11 some reason. But failing that is really</p> <p>12 something that is a liability on the state</p> <p>13 books that could cost the state money in</p> <p>14 the future.</p> <p>15 MR. WALDEN: I was going to ask</p> <p>16 that very point, which is when you</p> <p>17 introduced this slide, you said that</p> <p>18 these may not be as high because there</p> <p>19 may be some companies that don't</p> <p>20 qualify or comply with their</p> <p>21 obligations. That assumes that they</p> <p>22 are checking and actually verifying</p> <p>23 applicant-supplied data, right?</p> <p>24 THE WITNESS: Right. So that</p> <p>25 that would be their process to verify</p>	<p style="text-align: right;">Page 233</p> <p>1 J. Goodman</p> <p>2 and offer incentives. So it</p> <p>3 wouldn't -- some companies don't think</p> <p>4 hit these commitments and EDA confirms</p> <p>5 that, then the incentives cost less</p> <p>6 than the numbers in the slide.</p> <p>7 A. So in terms of opportunities to</p> <p>8 improve oversight, one key step is to</p> <p>9 establish a process for regularly</p> <p>10 evaluating incentives coming up with who</p> <p>11 should do it, what programs should be</p> <p>12 covered, what the review schedule should</p> <p>13 look like, all those kinds of things. In</p> <p>14 terms of taking them through the right</p> <p>15 office, I think there are a number of</p> <p>16 different options in New Jersey.</p> <p>17 As I mentioned, the state</p> <p>18 auditor, the comptroller and Rutgers all</p> <p>19 did an evaluations of New Jersey incentives</p> <p>20 and offered different aspects, examined</p> <p>21 different aspects of the programs.</p> <p>22 They are all potential contenders</p> <p>23 and there might be different pros and cons</p> <p>24 going in different directions, and then</p> <p>25 finally just sort of building off the</p>

<p style="text-align: right;">Page 234</p> <p>1 J. Goodman</p> <p>2 previous slide, there may be opportunities</p> <p>3 to have additional detail on the projected</p> <p>4 cost of these programs.</p> <p>5 So then finally to offer some</p> <p>6 concluding thoughts, New Jersey programs</p> <p>7 reflect some best practices but there are</p> <p>8 also many opportunities to improve, and I</p> <p>9 would broadly group those opportunities</p> <p>10 into three areas.</p> <p>11 One is options to improve</p> <p>12 economic effectiveness of the programs. So</p> <p>13 that could be better targeting of</p> <p>14 businesses that sell to out-of-state</p> <p>15 customers and also using the shorter</p> <p>16 timeframes.</p> <p>17 There are opportunities to make</p> <p>18 sure lawmakers are in control and know how</p> <p>19 much these programs cost to manage and with</p> <p>20 both better data and fiscal protections in</p> <p>21 the design of the programs, and then</p> <p>22 finally, one thing I think is clear and</p> <p>23 really illustrated is that incentive design</p> <p>24 is complicated. There are a lot of details</p> <p>25 to examine and that's where regular</p>	<p style="text-align: right;">Page 235</p> <p>1 J. Goodman</p> <p>2 evaluations can help because they dig into</p> <p>3 the detail of the programs and say what's</p> <p>4 working, what's not and how the state can</p> <p>5 make improvements.</p> <p>6 Thank you very much and I am</p> <p>7 happy to answer any additional questions.</p> <p>8 Q. Very useful suggestions at the</p> <p>9 end. Is it fair to say that these are not</p> <p>10 the only way New Jersey can improve its</p> <p>11 design, implementation and oversight of its</p> <p>12 incentive programs?</p> <p>13 A. Absolutely. As I mentioned, I do</p> <p>14 include eight specific ideas in my written</p> <p>15 statement and, additionally, there is a lot</p> <p>16 of more nuanced, fine-tuned recommendations</p> <p>17 that you can find in the New Jersey</p> <p>18 evaluations that I referenced.</p> <p>19 MR. QUINONES: Thank you.</p> <p>20 Professor Chen any additional</p> <p>21 questions?</p> <p>22 MR. CHEN: Just one, try to, in a</p> <p>23 way, reconcile your first and your</p> <p>24 fourth recommendations, the first being</p> <p>25 clarify the goals of the state's</p>
<p style="text-align: right;">Page 236</p> <p>1 J. Goodman</p> <p>2 incentives and the fourth being to</p> <p>3 target incentives to distressed areas,</p> <p>4 particularly with regard to New</p> <p>5 Jersey's programs, the programs, the</p> <p>6 Grow New Jersey program are two</p> <p>7 distinct goals. One is job growth and</p> <p>8 retention, and that is one that's</p> <p>9 usually mentioned as a primary goal.</p> <p>10 The other is capital investment,</p> <p>11 particularly in a growth zone, which is</p> <p>12 the four most distressed cities in the</p> <p>13 state; Camden, Trenton, Patterson</p> <p>14 and -- Passaic? And I think think, due</p> <p>15 to another part of legislation, I think</p> <p>16 Atlantic City is included, at least in</p> <p>17 some of those programs.</p> <p>18 So the way the program works is</p> <p>19 an application that came from Princeton</p> <p>20 or short Hills would not be eligible</p> <p>21 under the metrics established, but the</p> <p>22 one from Camden would. And there is</p> <p>23 nothing secret about this. It's</p> <p>24 because they changed the eligibility</p> <p>25 criteria if you -- in Grow New Jersey.</p>	<p style="text-align: right;">Page 237</p> <p>1 J. Goodman</p> <p>2 So my question is, in program</p> <p>3 design, do you have a view on whether</p> <p>4 it is desirable to mix those two goals</p> <p>5 in one program where the metrics of</p> <p>6 accountability and eligibility either</p> <p>7 have to be changed in order to</p> <p>8 encompass the areas, the particular</p> <p>9 geographic areas that you want to</p> <p>10 encompass, or is it possible that could</p> <p>11 lead to fuzziness, confusion in program</p> <p>12 implementation.</p> <p>13 Is that anything that you have</p> <p>14 any experience or --</p> <p>15 THE WITNESS: So we see states do</p> <p>16 different things in their design.</p> <p>17 Sometimes states sort of pack a lot of</p> <p>18 ideas into a few flagship programs,</p> <p>19 which is what New Jersey's approach has</p> <p>20 been. They have lots of sort of</p> <p>21 discrete programs.</p> <p>22 I certainly don't have a -- from</p> <p>23 our research, a clear recommendation</p> <p>24 between those two things. I think if</p> <p>25 you are going to use an approach of</p>

<p style="text-align: right;">Page 238</p> <p>1 J. Goodman</p> <p>2 having a lot of different ideas in one</p> <p>3 program, it's important to, A, be clear</p> <p>4 about what the different purposes are,</p> <p>5 and, B, make sure they are not working</p> <p>6 at cross purposes from one another.</p> <p>7 So making sure that if your goal</p> <p>8 is create jobs throughout the state, is</p> <p>9 it acceptable if a company moves jobs</p> <p>10 from area that isn't in distress to an</p> <p>11 area that is distressed? That is a</p> <p>12 reasonable policy question, but you</p> <p>13 need to make a decision about whether</p> <p>14 that's an acceptable outcome or that's</p> <p>15 not, because it serves one of the goals</p> <p>16 but not really the other one.</p> <p>17 MR. CHEN: Or if it doesn't</p> <p>18 create many new jobs or retain jobs at</p> <p>19 all, but it does create a lot of</p> <p>20 capital investment. It would be OK to</p> <p>21 still contain that within a program</p> <p>22 that is geared primarily towards job</p> <p>23 growth?</p> <p>24 THE WITNESS: So we do see job</p> <p>25 creation and capital investment used</p>	<p style="text-align: right;">Page 239</p> <p>1 J. Goodman</p> <p>2 together in incentive programs often.</p> <p>3 I think it is reasonable to sort of dig</p> <p>4 into why you care about a capital</p> <p>5 investment versus just job creation.</p> <p>6 I think it is usually pretty</p> <p>7 intuitive why states want to create</p> <p>8 jobs. Sometimes that's because</p> <p>9 something related to the degree of</p> <p>10 long-term commitment of the company, if</p> <p>11 they make a capital investment, they</p> <p>12 are more likely to stay long term.</p> <p>13 It could also be that there are</p> <p>14 sort of property tax implications</p> <p>15 related to local governments related to</p> <p>16 a capital investment.</p> <p>17 So if that's the direction you're</p> <p>18 going with, you need to be clear about</p> <p>19 why you care about capital investment.</p> <p>20 MR. CHEN: Thank you.</p> <p>21 MR. QUINONES: Thank you.</p> <p>22 MR. CHEN: Thank you very much,</p> <p>23 Mr. Chen.</p> <p>24 MR. CHEN: Especially for</p> <p>25 traveling to New Jersey.</p>
<p style="text-align: right;">Page 240</p> <p>1 J. Whiten</p> <p>2 Jon Whiten.</p> <p>3 Do you swear or affirm that the</p> <p>4 testimony you are going to give will be</p> <p>5 the truth, the whole truth and nothing</p> <p>6 but the truth?</p> <p>7 THE WITNESS: I do.</p> <p>8 MR. CHEN: Thank you very much.</p> <p>9 EXAMINATION BY</p> <p>10 MS. PATEL:</p> <p>11 Q. Good afternoon, Mr. Whiten.</p> <p>12 A. Good afternoon.</p> <p>13 Q. So, first, I want to thank you</p> <p>14 for joining us here today and taking the</p> <p>15 time to learn from your years of experience</p> <p>16 in policy research, specifically in New</p> <p>17 Jersey's tax incentive programs.</p> <p>18 So as Professor Chen and</p> <p>19 Mr. Walden explained earlier today, a part</p> <p>20 of our mandate is conducting an in-depth</p> <p>21 examination of the Economic Opportunity Act</p> <p>22 of 2013. And as we've heard from various</p> <p>23 witnesses today, at its core of this</p> <p>24 mandate is this piece of legislation that a</p> <p>25 lot of the application, implementation and</p>	<p style="text-align: right;">Page 241</p> <p>1 J. Whiten</p> <p>2 the impact on the taxpayers and the</p> <p>3 companies stems from.</p> <p>4 So in addition to gathering the</p> <p>5 information at the company level and also</p> <p>6 the EDA oversight, we are trying to conduct</p> <p>7 that in-depth examination of how the EOA</p> <p>8 changed the state of play in legislation</p> <p>9 for tax benefits in New Jersey, and where</p> <p>10 do we go from here.</p> <p>11 So before we begin on the</p> <p>12 substance, Mr. Whiten, I just want to ask</p> <p>13 you a couple beginning questions.</p> <p>14 Are you testifying voluntarily</p> <p>15 here today?</p> <p>16 A. Yes.</p> <p>17 Q. Are you aware that the EDA may</p> <p>18 ask to cross-examine you at the conclusion</p> <p>19 of your testimony?</p> <p>20 A. Yes.</p> <p>21 Q. Mr. Whiten, are you currently</p> <p>22 employed?</p> <p>23 A. Yes, I am.</p> <p>24 Q. Where are you currently employed?</p> <p>25 A. At the Center on Budget and</p>

<p style="text-align: right;">Page 242</p> <p>1 J. Whiten</p> <p>2 Policy Priorities.</p> <p>3 Q. When did your interest in the</p> <p>4 study of the New Jersey tax incentive</p> <p>5 programs begin?</p> <p>6 A. Started paying close attention to</p> <p>7 New Jersey's tax incentive programs in 2009</p> <p>8 when I was working as a journalist in</p> <p>9 Jersey City. And at that time, there were</p> <p>10 a lot of tax incentives going into Jersey</p> <p>11 City, and it was something of a political</p> <p>12 and economic interest.</p> <p>13 Q. And after this initial interest,</p> <p>14 did there come a time when you were</p> <p>15 employed at New Jersey Policy Perspective?</p> <p>16 A. Yes, I began working at New</p> <p>17 Jersey Policy Perspective in the fall of</p> <p>18 2011.</p> <p>19 Q. And during your time at New</p> <p>20 Jersey Policy Perspective, did you conduct</p> <p>21 policy research on specifically New</p> <p>22 Jersey's tax incentive programs?</p> <p>23 A. I did. I really began digging</p> <p>24 into that in 2012 at NJPP.</p> <p>25 Q. Can you describe some of that</p>	<p style="text-align: right;">Page 243</p> <p>1 J. Whiten</p> <p>2 policy research?</p> <p>3 A. Sure. Really, the main goal was</p> <p>4 to take the information that the EDA made</p> <p>5 publicly available and translate it a</p> <p>6 little bit and continue to shine a light</p> <p>7 and tracking it in different ways, subject</p> <p>8 it over time to identify policy trends and</p> <p>9 things that had happened as a result of</p> <p>10 changes in legislation.</p> <p>11 Q. You had mentioned that one of the</p> <p>12 sources of your data was the EDA data and</p> <p>13 what was publicly available. Can you</p> <p>14 continue to describe a little bit of what</p> <p>15 your main research methods were to analyze</p> <p>16 that data?</p> <p>17 A. Sure. It's basic quantitative</p> <p>18 analysis of the existing EDA data,</p> <p>19 basically taking it into new spreadsheets</p> <p>20 and running different formulas on it, as</p> <p>21 well as some qualitative analysis, reading</p> <p>22 through, you know, EDA agendas and getting</p> <p>23 a sense of what was going on with</p> <p>24 incentives being approved.</p> <p>25 Q. So now, specifically looking at</p>
<p style="text-align: right;">Page 244</p> <p>1 J. Whiten</p> <p>2 where the legislation is today and</p> <p>3 understanding more of the evolution</p> <p>4 historically, when you began your time at</p> <p>5 New Jersey Policy Perspective, you were at</p> <p>6 a very similar cross roads. It was pre</p> <p>7 EOA13 which is what I'm going to use to</p> <p>8 refer to the Economic Opportunity Act, and</p> <p>9 it was at a point where legislation was</p> <p>10 about to be overhauled and kind of</p> <p>11 redesigned.</p> <p>12 Can you take us back to around</p> <p>13 that time to describe what the state of</p> <p>14 play was in 2012?</p> <p>15 A. Sure. In 2012, we were beginning</p> <p>16 to see what I would say is sort of an</p> <p>17 initial search in subsidies and tax</p> <p>18 incentives that were being offered by the</p> <p>19 state of New Jersey.</p> <p>20 New Jersey has had tax incentive</p> <p>21 programs dating back to 1996, but we didn't</p> <p>22 really see an explosion in these programs</p> <p>23 until during the Great Recession. So in</p> <p>24 2012 or so, we were beginning to see a lot</p> <p>25 of really high-profile, over 100 million</p>	<p style="text-align: right;">Page 245</p> <p>1 J. Whiten</p> <p>2 dollar deals for single companies, that</p> <p>3 kind of stuff going on, and the volume,</p> <p>4 overall volume of incentives was also</p> <p>5 increasing.</p> <p>6 Q. So if we're focusing just on the</p> <p>7 legislation that existed pre EOA13, did</p> <p>8 you -- what is your perspective in terms of</p> <p>9 whether that legislation was effective to</p> <p>10 achieve its aims, so economic development</p> <p>11 and benefit to taxpayers, balanced out with</p> <p>12 the amount of awards that were doled out?</p> <p>13 A. Hindsight is interesting, when</p> <p>14 you compare it to what happened after</p> <p>15 EOA13, but at the time I was certainly of</p> <p>16 the opinion that it was tilting very</p> <p>17 heavily towards corporations that were</p> <p>18 applying for tax incentives and more and</p> <p>19 more away from taxpayer interests.</p> <p>20 We saw this related to two</p> <p>21 metrics, both the overall volume that was</p> <p>22 being approved and the cost, the taxpayer</p> <p>23 cost per job. Both of those have increased</p> <p>24 over time.</p> <p>25 Q. Did there come a time during the</p>

<p style="text-align: right;">Page 246</p> <p>1 J. Whiten</p> <p>2 policy review that you became familiar with</p> <p>3 the legislative design of the EOA13?</p> <p>4 A. Yes.</p> <p>5 Q. Can you briefly describe for the</p> <p>6 members of the public EOA13 and an overview</p> <p>7 of the legislation?</p> <p>8 A. Sure. EOA13 did a whole lot of</p> <p>9 different things, but one of its core</p> <p>10 functions was streamlining New Jersey's tax</p> <p>11 incentive programs and leaving us today</p> <p>12 with two active programs, the Grow New</p> <p>13 Jersey program and for, you know, job</p> <p>14 creation, retention, and ERG program for</p> <p>15 redevelopment.</p> <p>16 The EOA13 also brought a new</p> <p>17 sophistication to the way that New Jersey</p> <p>18 was designing policy run incentives with a</p> <p>19 lot of additional targeting and bonuses</p> <p>20 that you could get if you were in a</p> <p>21 specific industry, specific location and</p> <p>22 things of that nature. But I think that</p> <p>23 the targeting and things like that were by</p> <p>24 and large positive.</p> <p>25 At the same time, the EOA13</p>	<p style="text-align: right;">Page 247</p> <p>1 J. Whiten</p> <p>2 largely took out any fiscal constraint,</p> <p>3 particularly in Grow New Jersey, which has</p> <p>4 no cap of any kind. It has individual, you</p> <p>5 know, project award caps, but no overall</p> <p>6 cap. And so I think that that is what has</p> <p>7 led us to where we are today.</p> <p>8 Q. So we have heard some of the</p> <p>9 witnesses testify before to a spending cap.</p> <p>10 So is what you are describing that the</p> <p>11 EOA13, when implemented, removed the</p> <p>12 spending cap in terms of the overall amount</p> <p>13 of awards that would be issued per year?</p> <p>14 A. Correct. Except for Grow New</p> <p>15 Jersey, that was still a cap on one piece</p> <p>16 of ERG, which has been -- I will just add</p> <p>17 one thing on the spending caps, that that</p> <p>18 spending cap on ERG has actually been</p> <p>19 increased twice when the EOA ran up against</p> <p>20 the cap. What usually happens, you do</p> <p>21 follow-up legislation that no one's really</p> <p>22 paying attention to.</p> <p>23 Q. So just to be clear, so after</p> <p>24 2013, there has been incremental increases</p> <p>25 in the cap for that one specific part of</p>
<p style="text-align: right;">Page 248</p> <p>1 J. Whiten</p> <p>2 ERG, and that has been through legislative</p> <p>3 amendment?</p> <p>4 A. Yes.</p> <p>5 MR. WALDEN: When were those</p> <p>6 amendments?</p> <p>7 THE WITNESS: Off the top of my</p> <p>8 head, I do not know. I would have to</p> <p>9 go back and check.</p> <p>10 MR. WALDEN: Would you mind</p> <p>11 following up with us?</p> <p>12 THE WITNESS: I can do that.</p> <p>13 Q. So you mentioned the tiered</p> <p>14 approach and the bonus. We're going to get</p> <p>15 to that a little bit later.</p> <p>16 Before we get there, I want to</p> <p>17 just kind of focus on what the numbers are</p> <p>18 in terms of the awards that have been doled</p> <p>19 out historically.</p> <p>20 So through your time at New</p> <p>21 Jersey Policy Perspective, you have written</p> <p>22 a series of reports that are very</p> <p>23 specifically focused on what you called the</p> <p>24 surge. So beginning with your April 2013</p> <p>25 report, you discussed a sharp uptick in</p>	<p style="text-align: right;">Page 249</p> <p>1 J. Whiten</p> <p>2 corporate subsidies and tax incentive</p> <p>3 reports, and when you refer to this, you</p> <p>4 are specifically referring to the fact that</p> <p>5 they exist even before the EOA13.</p> <p>6 So before we get to the EOA13,</p> <p>7 where that surge went, can you just</p> <p>8 describe to us the evolution of that surge</p> <p>9 and where it was ending in 2012?</p> <p>10 A. Sure. So -- and to do that, I</p> <p>11 will have to put us in two time frames,</p> <p>12 because, again, tax incentives in New</p> <p>13 Jersey go back to 1996.</p> <p>14 So if you look at the decade of</p> <p>15 the 2000s, instead of the total amount that</p> <p>16 was awarded, you break it down, volume</p> <p>17 approved by month, that was 10 million</p> <p>18 dollars a month, was the clip of incentive</p> <p>19 awards in New Jersey during the 2000s. And</p> <p>20 the cost per job was about 17,000 dollars.</p> <p>21 Q. So when you say the 2000s, you</p> <p>22 mean 2000 to 2009?</p> <p>23 A. Correct.</p> <p>24 So in the 2010s but pre EOA, that</p> <p>25 increased to 55.7 million dollars per</p>

<p style="text-align: right;">Page 250</p> <p>1 J. Whiten</p> <p>2 month, and the cost per job also</p> <p>3 skyrocketed to 43,000 dollars per job.</p> <p>4 Q. Before we get to the post-EOA,</p> <p>5 just so I can be clear on these numbers, so</p> <p>6 for the ten years before we get to 2010,</p> <p>7 the average per job amount was 17,000, and</p> <p>8 then within the first three years of the</p> <p>9 2010s, so 2010 through 2013, it went up to</p> <p>10 43,000?</p> <p>11 A. Correct.</p> <p>12 Q. That's even before the EOA was</p> <p>13 implemented?</p> <p>14 A. Correct.</p> <p>15 Q. And did the surge continue after</p> <p>16 the EOA was implemented in 2013?</p> <p>17 A. Yes, it -- if you think of it as</p> <p>18 sort of a graph, it went up in a hockey</p> <p>19 stick type fashion.</p> <p>20 Q. Do you have the data and</p> <p>21 statistics for what that surge was after</p> <p>22 the EOA?</p> <p>23 A. Sure. After the EOA, through the</p> <p>24 end of 2018, we were up to 96.4 million per</p> <p>25 month, and the cost per job was about</p>	<p style="text-align: right;">Page 251</p> <p>1 J. Whiten</p> <p>2 78,000 dollars.</p> <p>3 Q. That's across the entire state?</p> <p>4 A. Yes.</p> <p>5 Q. So one of the things that we are</p> <p>6 trying to learn more about is how the EOA</p> <p>7 has separated out the bonus and the tiered</p> <p>8 approach for different parts of the state.</p> <p>9 So if that number is across the state, do</p> <p>10 you have any information about -- we have</p> <p>11 learned a little bit about the South Jersey</p> <p>12 district, or Camden specifically. Were the</p> <p>13 numbers, if you know, different for Camden?</p> <p>14 A. The numbers were much higher for</p> <p>15 Camden. You don't actually measure the</p> <p>16 volume per month when you are looking at a</p> <p>17 specific job because, really, you're not</p> <p>18 going to have it on board every month, but</p> <p>19 certainly on cost per job, it was a huge</p> <p>20 differential.</p> <p>21 The cost per job of the Camden</p> <p>22 awards, of which there were 1.6 billion</p> <p>23 dollars after the EOA, was about 274,000</p> <p>24 dollars per job.</p> <p>25 MR. CHEN: Is this specifically</p>
<p style="text-align: right;">Page 252</p> <p>1 J. Whiten</p> <p>2 for Camden or any growth center?</p> <p>3 A. This is Camden city.</p> <p>4 Q. So just to be clear, so the</p> <p>5 average statewide is 78,000; for Camden the</p> <p>6 post-EOA period was 274,000 per job?</p> <p>7 A. Correct.</p> <p>8 Q. Now, just taking the entire state</p> <p>9 surge generally, what do you think</p> <p>10 contributed most to the continued increase</p> <p>11 of the awards that were doled out?</p> <p>12 MR. WALDEN: Can I clarify for</p> <p>13 one second, I apologize. Help me</p> <p>14 understand this. The state is paying</p> <p>15 274,000 dollars a year per job?</p> <p>16 THE WITNESS: Not per year.</p> <p>17 Total over the ten-year lifetime.</p> <p>18 MR. WALDEN: Got it. Thank you.</p> <p>19 Sorry.</p> <p>20 Q. So what in your opinion, with</p> <p>21 respect to this, contributed the most to</p> <p>22 this continued increase?</p> <p>23 A. Well, you know, the sort of</p> <p>24 direct factor is that the legislation</p> <p>25 underlying these programs has changed and</p>	<p style="text-align: right;">Page 253</p> <p>1 J. Whiten</p> <p>2 rapidly expanded and sort of shifted</p> <p>3 priorities in a way that has allowed sort</p> <p>4 of an unfettered awarding of tax</p> <p>5 incentives.</p> <p>6 Q. When you say "shifting</p> <p>7 priorities," can you expand a little bit on</p> <p>8 that?</p> <p>9 A. Well, shifting priorities, you</p> <p>10 know, from my point of view and from NJPP's</p> <p>11 point of view while I was there, the key</p> <p>12 thing they're paying attention to was the</p> <p>13 fiscal part of this and the long-term</p> <p>14 budget impact.</p> <p>15 So if you even just narrowed in</p> <p>16 on the fiscal priority, I think over time</p> <p>17 the idea became that fiscal control is not</p> <p>18 something that was essential to these</p> <p>19 programs significantly, in the broadest,</p> <p>20 you know, way of thinking about it.</p> <p>21 There is locale. Obviously,</p> <p>22 that's not a big concern of legislators.</p> <p>23 There were other shifting priorities. I</p> <p>24 think there were geographic shifting of</p> <p>25 priorities. And again, like I said with</p>



<p style="text-align: right;">Page 254</p> <p>1 J. Whiten</p> <p>2 EOA2013, there was an attempt to make some</p> <p>3 industry-specific priorities as well.</p> <p>4 Q. So what you just mentioned, would</p> <p>5 it be fair to say that some of the most</p> <p>6 significant changes in terms of the</p> <p>7 legislative design for the EOA would be the</p> <p>8 removal of the spending cap, at least for</p> <p>9 all of Grow NJ, the expanse of geographic</p> <p>10 expansion and shifts, and also that the</p> <p>11 policy shift towards the system of tiered</p> <p>12 bonuses?</p> <p>13 A. Yeah, those were the biggest. I</p> <p>14 would add that, in the positive direction,</p> <p>15 EOA13 began to treat, quote/unquote,</p> <p>16 at-risk jobs, jobs that have been retained,</p> <p>17 differently than jobs that were reduced in</p> <p>18 the state. So that was a positive</p> <p>19 development.</p> <p>20 There was some loopholes and ways</p> <p>21 to get around that in the original</p> <p>22 legislation, but still it was a step in the</p> <p>23 right direction. And the other major</p> <p>24 change, I think, with EOA 2013 was a little</p> <p>25 bit of a change to the benefits test which</p>	<p style="text-align: right;">Page 255</p> <p>1 J. Whiten</p> <p>2 I know came up earlier.</p> <p>3 Q. I'm going to ask you a little bit</p> <p>4 more -- to expand a little bit more on the</p> <p>5 loopholes, the bonuses and net benefit test</p> <p>6 just a little bit later.</p> <p>7 But taking the overall</p> <p>8 legislative design of the EOA13, in your</p> <p>9 perspective, do you believe that as a</p> <p>10 legislative design, it was successful to</p> <p>11 create the reform that was necessary after</p> <p>12 2012?</p> <p>13 A. No, I -- at its core, I think EOA</p> <p>14 2013 was a real missed opportunity for</p> <p>15 reform. I know a lot of people put in a</p> <p>16 lot of hard work designing that legislation</p> <p>17 over a long period of time.</p> <p>18 There were a lot of elements that</p> <p>19 were moving in a more sophisticated</p> <p>20 direction in terms of policy design, but I</p> <p>21 think when you look at those elements and</p> <p>22 combine them with sort of the fiscal</p> <p>23 explosion side of the legislation, you end</p> <p>24 up with a situation where you are kind of</p> <p>25 taking one or two steps forward and five or</p>
<p style="text-align: right;">Page 256</p> <p>1 J. Whiten</p> <p>2 seven steps back.</p> <p>3 Q. Do you believe that the volume of</p> <p>4 awards that have been approved and issued</p> <p>5 out of -- under the EOA13 is problematic?</p> <p>6 A. Yes.</p> <p>7 Q. So I want to go back to this</p> <p>8 idea --</p> <p>9 MR. WALDEN: Could I ask, can you</p> <p>10 just unpack that a little bit for us?</p> <p>11 Why is it problematic?</p> <p>12 THE WITNESS: Well, the chief</p> <p>13 concern is that there is a long-term</p> <p>14 budget pressure that is an explosion</p> <p>15 upwards will create, as we saw during</p> <p>16 Josh's presentation. That's just --</p> <p>17 even a five-year estimate is in the</p> <p>18 couple of billions of dollars. But it</p> <p>19 really will go for another decade since</p> <p>20 these are decade-long awards.</p> <p>21 I think that the real question</p> <p>22 is, are incentive programs doing what</p> <p>23 you need them to do, whatever your</p> <p>24 policy goals are? And do you need to</p> <p>25 spend that much money on the incentive</p>	<p style="text-align: right;">Page 257</p> <p>1 J. Whiten</p> <p>2 programs to get the results you want?</p> <p>3 I think over time what we have</p> <p>4 seen in New Jersey and in other states</p> <p>5 is that these programs have just become</p> <p>6 more competitive, you know, within</p> <p>7 states and cities, this arms race that</p> <p>8 everyone is engaged in, but I think</p> <p>9 you're coming at it from the point of</p> <p>10 view, which I am sort of, fiscal</p> <p>11 watchdog and also someone who cares</p> <p>12 about other public investments that the</p> <p>13 state needs to make every single year,</p> <p>14 it's highly problematic to engage in</p> <p>15 this kind of race to the bottom.</p> <p>16 MR. WALDEN: Let me just ask one</p> <p>17 more follow-up question. Let's look at</p> <p>18 it on an macroeconomic level, right?</p> <p>19 Based on the data that you just</p> <p>20 gave us, fair to say that between the</p> <p>21 2009s and presently, the amount of</p> <p>22 money that we are spending on tax</p> <p>23 incentives every year has gone up</p> <p>24 tenfold?</p> <p>25 THE WITNESS: Yeah.</p>

<p style="text-align: right;">Page 258</p> <p>1 J. Whiten</p> <p>2 Approximately.</p> <p>3 MR. WALDEN: Roughly, right?</p> <p>4 So what is a fair expectation in</p> <p>5 terms of the improvements to the</p> <p>6 economy based on that, you know,</p> <p>7 significant increase in tax incentives?</p> <p>8 THE WITNESS: I think you are</p> <p>9 getting to a large and thorny and thick</p> <p>10 existential question about tax</p> <p>11 incentives across the country and in</p> <p>12 New Jersey, which the argument of</p> <p>13 someone who might not agree with my</p> <p>14 perspective on that would say, well, it</p> <p>15 would be ten times worse if we didn't</p> <p>16 do that. Right?</p> <p>17 So it's not necessarily even</p> <p>18 about growing the economy in that kind</p> <p>19 of purview. It's about keeping up with</p> <p>20 what other states are doing and not</p> <p>21 losing ground.</p> <p>22 Whether or not that's actually</p> <p>23 how the economy works and actually how</p> <p>24 corporations make decisions about site</p> <p>25 locations I think is a very different</p>	<p style="text-align: right;">Page 259</p> <p>1 J. Whiten</p> <p>2 story.</p> <p>3 Q. So my next question, Mr. Walden</p> <p>4 set it up pretty well, is that, looking at</p> <p>5 it from that abstract in terms of benefit</p> <p>6 to the economy for New Jersey and being a</p> <p>7 little bit more specific, in the course of</p> <p>8 your policy research, what is your</p> <p>9 perspective in terms of actual benefit to</p> <p>10 the state of New Jersey after the EOA was</p> <p>11 implemented in terms of job creation,</p> <p>12 capital investments to different areas of</p> <p>13 New Jersey? Do you believe that there has</p> <p>14 been significant benefit, or is that</p> <p>15 something that's been compromised?</p> <p>16 A. I think there has been a benefit.</p> <p>17 There is no doubt that there has been an</p> <p>18 benefit from these programs. I think any</p> <p>19 good researcher or economist or anybody who</p> <p>20 is thinking about any kind of budgeting,</p> <p>21 you have to think about what the costs are</p> <p>22 on that type of budget.</p> <p>23 And I think there have been</p> <p>24 benefits. I don't believe that they are</p> <p>25 worth the amount of money that New Jersey</p>
<p style="text-align: right;">Page 260</p> <p>1 J. Whiten</p> <p>2 is putting into this, this sort of</p> <p>3 strategy. I think if you were to force</p> <p>4 lawmakers to actually spend this amount of</p> <p>5 money, rather than do it through future tax</p> <p>6 credits, they would come to similar</p> <p>7 conclusions.</p> <p>8 Q. So to sum it up, in your</p> <p>9 perspective, the cost is not worth the</p> <p>10 benefit in terms of the implementation and</p> <p>11 application of the EOA?</p> <p>12 A. Correct.</p> <p>13 Q. So moving a little bit more</p> <p>14 specifically in terms of provisions that</p> <p>15 were implemented through the EOA, we have</p> <p>16 spoken briefly about loopholes or the</p> <p>17 special terms which are considered bonuses.</p> <p>18 Can you just unpack that a little</p> <p>19 bit and take that both in turn -- in terms</p> <p>20 of potentially providing some examples and</p> <p>21 the different ways that they apply around</p> <p>22 the state?</p> <p>23 A. Sure. I think the main thing</p> <p>24 was, again, there was targeting around</p> <p>25 geographies, and usually this was done with</p>	<p style="text-align: right;">Page 261</p> <p>1 J. Whiten</p> <p>2 either lower requirements to actually get</p> <p>3 an incentive or more lucrative potential</p> <p>4 incentives for the company for the project.</p> <p>5 Sometimes it was both in these different</p> <p>6 cases. But there was targeting of transit</p> <p>7 hubs and distressed municipalities and</p> <p>8 things of that nature. That was one layer</p> <p>9 of the targeting and the least lucrative, I</p> <p>10 guess, if you will.</p> <p>11 Then there was targeting across a</p> <p>12 broader range of South Jersey counties, so</p> <p>13 that's Atlantic, Burlington, Camden, Cape</p> <p>14 May, Cumberland, Gloucester, Ocean and Salem.</p> <p>15 That is another layer on top there.</p> <p>16 Then there was, with regard to</p> <p>17 the state growth zones which were just</p> <p>18 mentioned, Passaic, Trenton, Patterson and</p> <p>19 Camden, plus later the addition of Atlantic</p> <p>20 City through subsequent legislation. And</p> <p>21 then there was Camden City which is sort of</p> <p>22 in a world of its own under EOA13 and, you</p> <p>23 know, the way I would describe it to my</p> <p>24 mother or someone, they just have an extra</p> <p>25 special bonus category.</p>

J. Whiten

Q. So some of your New Jersey Policy Perspective reports unpack this a little further, and you have discussed that the EOA13 treats these targeted industries and locations as bonuses rather than a baseline for a grant. Can you expand on that a little bit because I think it is important to understand how these are actually applied to South Jersey projects.

A. So I think it dovetails with something good that Josh mentioned in his testimony, which is tying in to what your goals are, and if the goals are really that you want to incentivize projects that are in this particular area or in this targeted industry, let's make that the baseline. And then if companies are doing less, either they are not eligible for the tax break or they get a tax break that's much smaller.

But instead, the basic policy design of EOA2013 was, you meet the bare minimum, you get the base, and then you get, on top of that, all of these different

J. Whiten

components. I just think that that would only happen in a policy design that also doesn't have an overall spending cap because then you can just build these bonuses on top and not really have to worry about the cap.

Q. So would it be fair to say some of the projects that were based in South Jersey were essentially benefiting twice under the provisions of EOA13?

A. I'm not sure what you mean by the question. Can you --

Q. In terms of they would have a lower threshold to meet the obligations to apply for a project, but they would also be -- have these bonuses that they potentially could apply for or have -- you know, be willing to add to the project application?

A. Sure. Yeah. In that way -- a project at any targeted kind of zone would benefit both from having a lower barrier to entry and a higher tax cost per job.

Q. So one of the things that we want

J. Whiten

to understand a little bit more is the distinction between an at-risk job and a new job.

Can you explain that a little bit further?

A. Sure. At-risk jobs were jobs that got certified by the CEO, as we heard a little bit about earlier today, as at risk of leaving the state, and those have been, I think, an increasing part of New Jersey's overall approach to tax incentives over the years.

If you look back and kind of break down the data, as I did before with the 2000s and the 2010s pre EOA, in the 2000s only 16 percent of jobs that were being subsidized with tax incentives were at risk or retaining jobs. In the 2010s, that increased to 46 percent, and so that was identified as a problem.

There were a lot of high-profile things happening pre EOA, that the public got a little outraged about and companies moving from Secaucus to Newark or from

J. Whiten

Newark to another part of Newark. To the average taxpayer, that didn't make sense. So in the EOA they changed the formula, the financial formula, for an at-risk job versus a job that was new to the city.

But what we actually saw was that the share of subsidized jobs hasn't really changed. It has been at 48 percent of the subsidized jobs post EOA are still just being shared within the state.

Q. From your perspective, if I can just take it one step further, why is it problematic that there has been a shift to a greater percentage of these awards being for at-risk jobs?

A. Well, because a lot of times the goals, again, are -- piggybacking again on what Josh was pointing out, the goals are sort of at odds with each other.

It is our goal as a state to grow the economy overall and create new jobs and target growth industries and things like that, or it's our goal to give a company a new headquarters down the road from where

1 J. Whiten  
2 its old headquarters was just because it is  
3 in a different municipality.

4 MR. WALDEN: Sir, I understand  
5 that, again, from the benefit to the  
6 state as opposed to the benefit to the  
7 region.

8 But is it also fair to say that  
9 the retained jobs is easier for people  
10 to cheat on? Right? That is, when  
11 you're bringing jobs into the state or  
12 you're creating new jobs, I mean, that  
13 seems to me that that would be a more  
14 tangible thing that just saying, hey, I  
15 may be leaving the state.

16 When you guys were at NJPP, did  
17 you find any data to suggest that those  
18 sorts of programs are more susceptible  
19 to fraud?

20 THE WITNESS: I have no data on  
21 that. But I think from a sort of  
22 conceptual level, you've seen more and  
23 more use of this kind of, like, we are  
24 going to threaten to leave and get a  
25 tax break to stay, but -- in New Jersey

1 J. Whiten  
2 and elsewhere, and I think that there  
3 is a whole process of that.

4 Consultants, they get hired by  
5 corporations who are already pretty  
6 sophisticated at dodging taxes at  
7 multiple levels, and they can help sort  
8 of navigate the different states'  
9 systems to be able to say, with a wink  
10 and a nod, and maybe it crosses some of  
11 the legal Ts and dots the legal Is,  
12 that, yeah, we checked out a facility  
13 in Pennsylvania and we might take our  
14 jobs there, we will sign a  
15 certification.

16 I think there is always a  
17 legitimate question of whether or not  
18 that threat to leave is real. I  
19 understand from a policymaking -- less  
20 from a policymaking, but from a  
21 political perspective, why calling that  
22 question out is fraught with concern  
23 because you don't want to be the  
24 legislator who says, well, this company  
25 threatened to leave and they actually

1 J. Whiten  
2 left.

3 So it's a situation that, like so  
4 much of the rest of the policy  
5 environment around tax incentives over  
6 the last 20 years, has shifted the  
7 power dynamic from state and local  
8 governments to corporations who are  
9 really holding all the cards in a  
10 negotiation.

11 Q. So this kind of goes into the  
12 next area which is, where do we go from  
13 here, right? So where we started at 2012  
14 before the EOA13 was enacted and  
15 implemented, and we are kind of at a  
16 similar crossroads.

17 So kind of taking what you have  
18 testified to here and our understanding of  
19 the impact of this legislation, I want to  
20 just kind of expand a little bit on some of  
21 the areas that you believe are fraught for  
22 improvement.

23 Before we get to opening the  
24 floor to the ideas that you have, where do  
25 we go from here in terms of improvements, I

1 J. Whiten  
2 wanted to talk specifically again about the  
3 South Jersey provisions.

4 So in terms of what future  
5 legislation or legislative design should  
6 be, should include or how it can be  
7 restructured to benefit taxpayers and  
8 really improve the economy, how in your  
9 perspective would you approach areas like  
10 Camden and the growth zones that have been  
11 identified in the ERG?

12 A. I think that whether it is a  
13 growth zone in South Jersey or North  
14 Jersey, Central Jersey, my approach as a  
15 policymaker would be the same, which is  
16 actually align it. Align the programs with  
17 our overall state policy goals and our  
18 state economic development goals. Make  
19 sure that those goals aren't working at  
20 odds with each other, and then to really  
21 bring the overall costs of all of these  
22 programs down significantly.

23 Q. How would you suggest reducing  
24 the overall costs of the programs?

25 A. Spending caps overall is the most

<p style="text-align: right;">Page 270</p> <p>1 J. Whiten</p> <p>2 obvious solution. I think it can be a</p> <p>3 spending cap that's on a program over the</p> <p>4 course of whatever that program's life span</p> <p>5 might be, so, you know, Grow under EOA 2013</p> <p>6 started at 2013 and expired in 2019. It</p> <p>7 could have had a cap of a billion and a</p> <p>8 half dollars, could have had a cap of 2</p> <p>9 billion dollars over the whole lifespan.</p> <p>10 The EDA had lawmakers have to</p> <p>11 figure out how to allocate it from there.</p> <p>12 I think the other thing that I</p> <p>13 would like to see is more tying in of the</p> <p>14 tax credit process, and any kind of</p> <p>15 spending cap to the actual appropriation</p> <p>16 process.</p> <p>17 I think as it stands now, if</p> <p>18 you're a legislator, you can vote on these</p> <p>19 programs. You can reap the benefit of the</p> <p>20 program by attending a ribbon cutting and</p> <p>21 things of that nature, and it looks like</p> <p>22 you are doing your part to grow the</p> <p>23 economy. It is a tough thing to do.</p> <p>24 But you don't have to actually</p> <p>25 appropriate funds for it, and we have seen</p>	<p style="text-align: right;">Page 271</p> <p>1 J. Whiten</p> <p>2 it in New Jersey history when lawmakers</p> <p>3 have to appropriate funds for this and</p> <p>4 choose not to.</p> <p>5 The BEIP program was the only</p> <p>6 program that was based on appropriations,</p> <p>7 and a few years ago lawmakers actually</p> <p>8 stopped appropriating money for it because,</p> <p>9 against all of the other priorities, they</p> <p>10 weren't able to come to a consensus that it</p> <p>11 was justified. And unfortunately, they</p> <p>12 went to the wrong direction and turned it</p> <p>13 into a tax credit option program over the</p> <p>14 long run.</p> <p>15 But I think overall, if the state</p> <p>16 is serious about curbing costs and</p> <p>17 controlling costs and being smarter about</p> <p>18 this overall, bringing more of the tax</p> <p>19 credit and tax incentive process back into</p> <p>20 the budget-making process would make a lot</p> <p>21 of sense.</p> <p>22 Q. And continuing on with the areas</p> <p>23 that you believe are ripe for reform, your</p> <p>24 most recent paper from New Jersey Policy</p> <p>25 Perspectives speaks a little bit to the</p>
<p style="text-align: right;">Page 272</p> <p>1 J. Whiten</p> <p>2 possibilities and the opportunities for</p> <p>3 reforming the net benefit test analysis.</p> <p>4 Can you expand on that first to</p> <p>5 provide us with just some information about</p> <p>6 the current state of the plan for net</p> <p>7 benefit test?</p> <p>8 A. Sure, so the net benefit test, I</p> <p>9 think that was defined earlier, but I will</p> <p>10 do it again just to be clear. It is the</p> <p>11 formula that the EOA uses to estimate the</p> <p>12 economic benefits of any proposed tax</p> <p>13 incentive.</p> <p>14 So it uses a whole lot of</p> <p>15 different factors. It's a complicated</p> <p>16 economic formula, you know, number of jobs,</p> <p>17 promised wages, where the location is and</p> <p>18 that kind of thing. And the tax break</p> <p>19 itself, the tax incentive is contentioned</p> <p>20 on the project meeting the requirements</p> <p>21 that are laid out in legislation of the net</p> <p>22 benefits test.</p> <p>23 Before the EOA 2013, most</p> <p>24 incentive projects had to deliver a net</p> <p>25 benefit of at least 110 percent, so 10</p>	<p style="text-align: right;">Page 273</p> <p>1 J. Whiten</p> <p>2 percent more than the dollar value of the</p> <p>3 subsidy. And that 110 percent benefit was</p> <p>4 measured over the same amount of time that</p> <p>5 the company was required to stay in the</p> <p>6 state or to face possible clawbacks or</p> <p>7 revocation of tax credit. This was usually</p> <p>8 15 years.</p> <p>9 So one of the things that EOA</p> <p>10 2013 changed was that it drastically</p> <p>11 changed this specifically in Camden, so</p> <p>12 now -- not now, currently, because I'll get</p> <p>13 to that in a second. It has actually been</p> <p>14 addressed, but there is a bit of a hole</p> <p>15 there, and I'm trying to lay the</p> <p>16 groundwork.</p> <p>17 Projects were required to only</p> <p>18 provide 100 percent net benefits. So right</p> <p>19 off the bat, you are skating on thin ice</p> <p>20 there. I have no reason -- I'm also not a</p> <p>21 Ph.D. economist, but I have no reason to</p> <p>22 question the validity of the net benefits</p> <p>23 test and its accuracy. But you are</p> <p>24 measuring the benefits over a decade, you</p> <p>25 might be a couple thousand dollars off, a</p>

J. Whiten

couple million dollars off, if you are talking about a 260 million dollars tax break. So 100 percent gives you no cushion, first of all.

But worse than that, in Camden City, the net benefit of 100 percent was measured over 35 years. The tax break itself was ten years with an additional sort of five-year possible clawback in times. So that's 15 years versus 35 years. So then you are actually creating a situation where New Jersey was at risk of losing hundreds of millions of dollars collectively on the deals that happened in Camden because of the way the net benefits test was designed.

Whether or not that's going to happen is an open question, but from a policy design point of view, you don't want to set yourself up for that to potentially happen. It's not responsible.

This has been changed moving forward. The EDA did it through regulation. But it wasn't sort of

J. Whiten

backdated, so the ones that had gone through in Camden with this 35 versus 15 mismatch still are putting New Jersey taxpayers at risk over the long run.

I would also suggest that, in addition to addressing with regulation, the EDA, it should be addressed, you know, through legislation, just give it more teeth. You want to have at least 110 percent net benefit, and you want to make sure it matches the amount of time that the company is required to stay in the state and to have strong clawback provisions as part of that if they don't.

MR. WALDEN: I'm not commenting on the clawback, but let me just ask you, in terms of the change to EDA by regulation, just help us understand, what was changed and when did that happen?

THE WITNESS: They changed it to essentially be that now they work -- so the amount of time that the net benefit test measured and the amount of time

J. Whiten

that the company was going to be required to stay, they were equal moving forward.

The company had to sign an affidavit saying that they planned to stay over 30 years, and that is -- that is a bit of a problem with the EDA regs, in my opinion.

Rather -- so here, I'll explain it a different way. Rather than simply returning to the old way it was done and saying let's make it 15 years for both and 110 percent, they kind of said, well, the company can say they are going to stay for 30 years and we will let them have the benefit of the 30-year net benefit analysis. Which is fine. They signed their thing saying they are going to stay.

But if they don't, you know, we can claw -- we institute some sort of clawback proceedings but, A, will we as a state? B, will we win? I think there is all those kind of questions

J. Whiten

that surround clawbacks overall.

MR. WALDEN: Well, if you are in a distressed area and it's a long period of time, what is the business failure rate? What happens if a company goes into bankruptcy? You can't recover money at that point?

THE WITNESS: Well, sure. I mean, that's another problem with clawbacks. Clawbacks are great. Every state should have clawbacks, but they are not -- clawbacks can't be seen as a substitute for smart policy design, particularly when you're talking about fiscal risk.

Q. So just to be clear, in terms of -- there's two things, I think, I just want to be clear about.

So the first is, in your perspective, there are ways that the future legislation can be a little more perfect in terms of oversight and kind of proactively looking at what the requirements are in terms of the actual benefit. And would it

<p style="text-align: right;">Page 278</p> <p>1 J. Whiten</p> <p>2 be in your perspective that there should be</p> <p>3 a shorter amount of time that companies are</p> <p>4 obligated to prove up this benefit to the</p> <p>5 state?</p> <p>6 A. If it corresponds with the amount</p> <p>7 of time that the tax credit or -- I think</p> <p>8 the shorter amount of time overall for a</p> <p>9 tax credit, the shorter you want to measure</p> <p>10 the economic benefit.</p> <p>11 Q. Also, to the second point in</p> <p>12 terms of the clawbacks and what you just</p> <p>13 testify to, obviously clawbacks are</p> <p>14 something that you do interactively, you</p> <p>15 know, when money has been approved and</p> <p>16 issued out, and then you have this effort</p> <p>17 to claw it back.</p> <p>18 So in your perspective, is part</p> <p>19 of the role in terms of the gatekeeper for</p> <p>20 the legislative design to be that that</p> <p>21 money should be held a little bit closer</p> <p>22 and not doled out to begin with to then</p> <p>23 have to claw it back?</p> <p>24 A. Yeah, I think for all of the</p> <p>25 reasons I just laid out, clawing back tax</p>	<p style="text-align: right;">Page 279</p> <p>1 J. Whiten</p> <p>2 credits that have already gone out is not</p> <p>3 necessarily the easiest thing for a state</p> <p>4 to do. So why wouldn't you, at the front</p> <p>5 end, make it less likely that you are going</p> <p>6 to get to a clawback situation and by just</p> <p>7 being a little more conservative in your</p> <p>8 use of tax credits.</p> <p>9 Q. My final question is more of a</p> <p>10 catch-all. In addition to the areas that</p> <p>11 you've already spoken about and identified</p> <p>12 as possible areas of reform in future</p> <p>13 legislation, are there any that we've</p> <p>14 mentioned that you would want to speak on a</p> <p>15 little bit further?</p> <p>16 A. Oversight and evaluation is a big</p> <p>17 one. And Pew has got way deeper expertise</p> <p>18 in that than NJPP or I personally do, but</p> <p>19 there have been numerous attempts in New</p> <p>20 Jersey at different types of oversight and</p> <p>21 evaluation, including a 2007 law that was,</p> <p>22 you know, supposed to create an annual</p> <p>23 report across all incentive programs to say</p> <p>24 how much was out the door, how much was</p> <p>25 projected over the next ten years or so,</p>
<p style="text-align: right;">Page 280</p> <p>1 J. Whiten</p> <p>2 what the salaries of those jobs were and</p> <p>3 all of these different factors that may not</p> <p>4 have been the perfect sort of oversight and</p> <p>5 evaluation report, but we don't actually</p> <p>6 know because we never have gotten one.</p> <p>7 So something like that that's</p> <p>8 done by an independent agency or even</p> <p>9 that's done in a comprehensive which by EDA</p> <p>10 itself would be incredibly helpful.</p> <p>11 Q. Can you expand on that in terms</p> <p>12 of the role that EDA plays or for a third</p> <p>13 party to come in and not audit but</p> <p>14 essentially regulate, how would that avenue</p> <p>15 from your perspective in terms of best</p> <p>16 practices work in practice?</p> <p>17 A. It could work in a variety of</p> <p>18 ways. This particular legislation I'm</p> <p>19 referring to, it would have been handled by</p> <p>20 the Treasury, because of the intersection</p> <p>21 of tax policy and, you know, it's obviously</p> <p>22 in close coordination with the Department</p> <p>23 of Labor and with the EDA itself.</p> <p>24 You could do it a number of ways.</p> <p>25 I think the key -- the key conceptual point</p>	<p style="text-align: right;">Page 281</p> <p>1 J. Whiten</p> <p>2 of that legislation was to have an annual</p> <p>3 report that puts a lot of information out,</p> <p>4 both into the public, but for legislators</p> <p>5 as they're in the depths of budgeting. And</p> <p>6 these kind of issues are actually on their</p> <p>7 mind.</p> <p>8 So if you tie that kind of report</p> <p>9 and oversight to, say, some sort of annual</p> <p>10 appropriations function, that's where</p> <p>11 you're actually getting at what lawmakers</p> <p>12 need to be more responsible about their</p> <p>13 decisions.</p> <p>14 MR. WALDEN: Were you present at</p> <p>15 the legislative hearing?</p> <p>16 THE WITNESS: Which?</p> <p>17 MR. WALDEN: That was on tax</p> <p>18 incentives.</p> <p>19 THE WITNESS: Oh, the recent one?</p> <p>20 No.</p> <p>21 MR. WALDEN: You were not, OK.</p> <p>22 There was a Senator that asked a</p> <p>23 question, I think, about the same</p> <p>24 statute, and she alleged that it was</p> <p>25 not being enforced.</p>

1 J. Whiten

2 THE WITNESS: That's correct.

3 MR. WALDEN: You said just a  
4 moment ago that there has never been a  
5 report.

6 THE WITNESS: That is correct.

7 MR. WALDEN: Can you just unpack  
8 that a little bit? I'm not sure that I  
9 understand how that happens, that you  
10 have a law and no one complies with it  
11 and no one does anything about it.

12 THE WITNESS: That is not  
13 uncommon but, yeah, the 2007 law  
14 created this annual report. Again, the  
15 report has never happened.

16 You never really hear about the  
17 report. It would come up every year  
18 during the budget process, Office of  
19 Legislative Services would ask -- would  
20 ask Special Treasury, because Treasury  
21 was the one tasked with it, where is  
22 this report, what's the status?

23 For the first couple of years of  
24 that line of questioning, it was, like,  
25 oh, this is a very complicated report.

1 J. Whiten

2 We are getting all this information, we  
3 will have it maybe next year. And  
4 eventually the rationale shifted to  
5 something about protecting some  
6 confidential taxpayer information  
7 which, you know, I took that at face  
8 value, that may very well be the case.  
9 So that kind of ended that.

10 There was legislation introduced  
11 in 2016, passed by the assembly in  
12 2016, died in the Senate, that aimed at  
13 fixing that problem by just inserting a  
14 clause into the original legislation,  
15 which is something like IRS privacy  
16 provisions notwithstanding, this report  
17 will happen, something like that.

18 I would like to see that  
19 legislation get passed and see if that  
20 could unlock the sort of magic formula  
21 to actually get this report done.  
22 Maybe it would; maybe it wouldn't.

23 I think the other part of that is  
24 that a lot of this information does  
25 already come into EDA, so maybe there

1 J. Whiten

2 is another way that EDA could be  
3 compelled to provide it in a different  
4 way than they do now.

5 Q. So my final area is an area that  
6 we haven't spoken about before, and it's a  
7 little bit more recent, which is the  
8 transfer and the sale of these EDA tax  
9 credits.

10 To the extent they are recent,  
11 there is very limited provisions in the EOA  
12 specifically geared towards regulating and  
13 overseeing that process. From your  
14 perspective and the policy research that  
15 you conducted and educated yourself in, can  
16 you speak a little bit to what would be  
17 ideal in terms of regulation and oversight  
18 of this process of companies being able to  
19 transfer and sell their tax credits?

20 A. So in my view, if you have got a  
21 broad based tax incentive program like Grow  
22 New Jersey or ERG, it should not include  
23 the ability to sell or transfer your tax  
24 credits, period.

25 If you want to make the case that

1 J. Whiten

2 early venture companies, tech startups,  
3 whatever, that aren't paying taxes yet need  
4 some assistance and they need to sell tax  
5 credits to help make their business grow,  
6 make that a different program, or make it a  
7 different piece of legislation or whatever  
8 actually targeted to those companies,  
9 because when you allow it in a broad based  
10 one, you are going to get some of those  
11 companies, but you're going to get  
12 multinational corporations that are  
13 sophisticated tax-dodging enterprises that  
14 are going to do the same thing.

15 It sort of goes against the  
16 purposes of the program, and it certainly  
17 raises a lot of fiscal oversight concerns.

18 Q. So from your perspective in terms  
19 of -- we are where we are, so companies are  
20 able to currently sell and transfer tax  
21 credits.

22 From your perspective, what's the  
23 best and most perfect method to regulate  
24 and oversee that? Would that be something  
25 that you believe should be incorporated



<p style="text-align: right;">Page 286</p> <p>1 J. Whiten</p> <p>2 into the legislative design in terms of</p> <p>3 process, and also -- or should that be</p> <p>4 within the purview of EDA to oversee,</p> <p>5 regulate and track that process of sale and</p> <p>6 transfer of tax credits?</p> <p>7 A. My inclination would always be</p> <p>8 that any oversight is done through</p> <p>9 legislation and that the legislature is at</p> <p>10 least empowered to provide oversight over</p> <p>11 entities like EDA. I think there is</p> <p>12 probably good reason that EDA could do a</p> <p>13 lot of it itself, and, yeah, there is</p> <p>14 information that is out there about this.</p> <p>15 It's just not provided in a regular</p> <p>16 fashion.</p> <p>17 Q. What are the dangers, from your</p> <p>18 perspective, of allowing companies to sell</p> <p>19 and transfer tax credits?</p> <p>20 A. Well, it gets to, like, the</p> <p>21 reason that we are offering the company tax</p> <p>22 incentives. Is it so they can just sort of</p> <p>23 pad their bottom line and, you know, game a</p> <p>24 sophisticated tax incentive program, or is</p> <p>25 it so they can grow the new jobs and create</p>	<p style="text-align: right;">Page 287</p> <p>1 J. Whiten</p> <p>2 the economic growth in some particular</p> <p>3 area?</p> <p>4 I think there is a danger with a</p> <p>5 sale and transfer, again, in the broad base</p> <p>6 programs, of them just being used as</p> <p>7 additional tools for applicants and</p> <p>8 companies that may not really need the</p> <p>9 assistance. Including, and this was</p> <p>10 mentioned earlier, including nonprofits,</p> <p>11 which is, you know, sort of astounding.</p> <p>12 Q. Mr. Whiten, I have no further</p> <p>13 questions, but I will open it to Mr. Chen</p> <p>14 or if anyone on the task force has any</p> <p>15 questions.</p> <p>16 MR. WALDEN: Can we just stay</p> <p>17 with that and unpack it a little bit</p> <p>18 more? Because, again, you may help</p> <p>19 educate me at the early stage of this,</p> <p>20 that will keep me on track six months</p> <p>21 from now.</p> <p>22 My understanding in the New</p> <p>23 Jersey program is not sale and transfer</p> <p>24 in the sense of, you can sell the</p> <p>25 credits, but you can't transfer the</p>
<p style="text-align: right;">Page 288</p> <p>1 J. Whiten</p> <p>2 obligations, right? Am I right about</p> <p>3 that?</p> <p>4 THE WITNESS: Right. That's</p> <p>5 correct.</p> <p>6 MR. WALDEN: So let's just say</p> <p>7 I'm XYZ Corporation, and I decide I</p> <p>8 would rather have the money now, it is</p> <p>9 more meaningful to me now. The CEO</p> <p>10 could just take it home, obviously, or</p> <p>11 it could be a capital investment in the</p> <p>12 company that was meaningful, a new IT</p> <p>13 system, whatever.</p> <p>14 If I sell the credit and I still</p> <p>15 keep the obligation intended to it, why</p> <p>16 is that necessarily dangerous, or is it</p> <p>17 necessarily dangerous?</p> <p>18 THE WITNESS: I don't think it is</p> <p>19 necessarily dangerous. I just -- I</p> <p>20 don't think it is the rationale for the</p> <p>21 program. It's not the stated purpose</p> <p>22 to allow a company to make decisions</p> <p>23 about these tax credits and do whatever</p> <p>24 they want with it. The legislative</p> <p>25 intent is to grow jobs and create a</p>	<p style="text-align: right;">Page 289</p> <p>1 J. Whiten</p> <p>2 stronger economy.</p> <p>3 MR. WALDEN: Well, let me ask the</p> <p>4 question in a different way.</p> <p>5 This may be a situation where</p> <p>6 there are no examples of it. But have</p> <p>7 there been examples since the program</p> <p>8 went live in 2013 where companies have</p> <p>9 either sold the credits and then gone</p> <p>10 under, sold the credits and just left</p> <p>11 the state and, you know, there should</p> <p>12 be clawbacks, but there are not</p> <p>13 clawbacks. When you were at NJPP, were</p> <p>14 there examples that came to your</p> <p>15 attention of those kinds of risks?</p> <p>16 THE WITNESS: There were not, in</p> <p>17 terms of specific companies that fall</p> <p>18 into those categories, but that is</p> <p>19 certainly a risk. You know, there</p> <p>20 is -- every single way you can lose</p> <p>21 oversight and control over tax</p> <p>22 incentives.</p> <p>23 Q. Just one last thought, based on</p> <p>24 that question. So, based on your</p> <p>25 knowledge, are you aware whether EDA is</p>

<p style="text-align: right;">Page 290</p> <p>1 J. Whiten 2 required to track when a company sells or 3 transfers its credits, does that company 4 need to get EDA approval to do so? 5 A. They have to get approval. 6 Whether it is with EDA or Treasury, I'm not 7 100 percent certain. It is pretty easy to 8 find that out after this. But they do have 9 to get approval, and they have to, you 10 know, apply for it, and it is, I assume, 11 tracked because we do see information that 12 comes out by request on that. 13 MR. WALDEN: So that's a great 14 question. So to the extent that there 15 is one risk that you could get the 16 credit and then transfer it to an 17 undesirable company, whatever that is, 18 history of fraud, you know, and 19 industry that the state doesn't need or 20 want, their approval process at least 21 cabins that risk assuming that in the 22 application process someone is looking 23 at that factor. 24 Do you know whether or not 25 somebody is looking at that factor in</p>	<p style="text-align: right;">Page 291</p> <p>1 J. Whiten 2 deciding whether to approve or 3 disapprove the applications to sell? 4 THE WITNESS: I believe that that 5 kind of subjective factor is not a hard 6 part of that approval process. 7 MS. PATEL: Thank you. 8 MR. CHEN: Maybe just, I don't 9 know if you heard the last question I 10 asked Mr. Goodman, but -- which focuses 11 on how we reconcile trying to 12 incentivize growth in distressed areas 13 compared to what I'll call avoiding 14 mission creep. Having such a diffuse 15 not particular statement of your 16 incentives that one size fits all which 17 could then lead to uneven or even 18 arbitrary application of a program. 19 And, you know, you have certainly 20 spoken here about, by some metrics, for 21 instance, the figures from some areas 22 like Camden where you said 274,000 23 dollars, a cost per job as opposed to 24 78,000 statewide average, as opposed to 25 even lower figures for other states</p>
<p style="text-align: right;">Page 292</p> <p>1 J. Whiten 2 with similar programs. That on its 3 face seems very distressed. 4 On the other hand, we know there 5 has been a lot of capital investment in 6 Camden, which is a distressed area, and 7 no one can argue the factories are good 8 in and of itself. 9 So I guess I'm wondering, is 10 there a way to explain this, to 11 reconcile this? Is this an outgrowth, 12 a part of the fact that we are trying 13 to now measure success through the 14 wrong lense? Because job growth may 15 not have been -- it actually was not 16 the metrics were changed. Job growth 17 in and of itself is not the reasons 18 primarily why these programs were 19 approved in Camden. It was more 20 capital investment. 21 So is the problem here the 22 inability to articulate with clarity 23 what the goal is, or is there something 24 else going on here? 25 THE WITNESS: I think that is the</p>	<p style="text-align: right;">Page 293</p> <p>1 J. Whiten 2 core of the problem. EOA tried to get 3 at targeting specific things and 4 specific places, and the more targeting 5 you can do the better. But when you're 6 doing -- there is the policy process, 7 and then there is sort of the political 8 process. And those two things, as we 9 see, across all sorts of different 10 policy areas don't always mesh well 11 together. 12 And so if you are thinking about 13 how to target incentives, you start to 14 target one part or one specific region 15 or even one specific project. Your 16 colleague down the aisle in the 17 legislature, they want the same thing 18 for their district, of course. 19 So that has been the political 20 side of how this has unfolded over 21 time, where the goals are not super 22 clear from a statewide sort of planning 23 and economic development perspective. 24 And instead, it's a little bit of, 25 everybody wants to get theirs.</p>

1 J. Whiten  
2 And so I think that's a problem  
3 that can only be solved during the  
4 political process and through the  
5 policies on --

6 MR. CHEN: That was not -- this  
7 situation was not EOA's doing.

8 THE WITNESS: No.

9 MR. CHEN: It was an error that  
10 was part of the legislation?

11 THE WITNESS: Yes.

12 MR. CHEN: And that's probably  
13 where we are going to find the source  
14 of the solution?

15 THE WITNESS: Yeah, I mean, it is  
16 a legislative solution. Doing  
17 legislative solutions involves engaging  
18 in the political process, which is  
19 messier.

20 MR. CHEN: I've heard that.

21 MR. WALDEN: Can I just ask --  
22 sorry, did anybody else want to ask?

23 Just one more question, and I ask  
24 this only because you were essentially  
25 at ground zero and I wasn't. But when

1 J. Whiten  
2 you were at NJPP, was there any work  
3 done to determine whether or not, let's  
4 say, special interests played a role in  
5 the creation of the statute and the  
6 choice, the legislative choices that  
7 were baked into the final version of  
8 the bill?

9 THE WITNESS: It wasn't a line of  
10 inquiry that we dug into because you  
11 can't really prove that thing with  
12 data. But I will say that, you know,  
13 there have been lots of other people  
14 who have presumed what kinds of  
15 interest may have been heavily engaged  
16 in. I think you can look at the data  
17 of what we have seen after EOA to draw  
18 some of those conclusions and say that  
19 that's a possibility.

20 MR. WALDEN: I only mention --  
21 and maybe this is just off topic, but  
22 there is kind of a way to measure the  
23 kind of the cost effect a little bit if  
24 it turns out that the money is  
25 eventually going to places where kind

1 J. Whiten  
2 of the power groups are. So that's the  
3 kind of thing that anecdotes are not  
4 helpful, data would be important. And  
5 I take it that nothing that NJPP did  
6 actually tried to measure what  
7 development companies, what lobbying  
8 firms were getting hired, nothing like  
9 that?

10 THE WITNESS: Correct.

11 MR. CHEN: Anything else?

12 MS. PATEL: Mr. Whiten, thank you  
13 very much. As we continue our in-depth  
14 examination, we may be calling on you  
15 again to continue this discussion on  
16 these topics, so thank you again.

17 THE WITNESS: Thank you all.

18 MR. CHEN: Well, this concludes  
19 our session for today. A transcript of  
20 today's session will be available on  
21 request, and we will explore other  
22 opportunities to make it available in  
23 even more convenient ways. We will  
24 work on that.

25 We plan to continue our

1 J. Whiten  
2 proceeding in subsequent sessions  
3 between now and the beginning of June  
4 in various parts of the state, so we  
5 will have as much information as  
6 possible before the issuance of our  
7 final report.

8 At a later session we will invite  
9 members of the public to offer any  
10 relevant testimony. It's been a long  
11 day, and I appreciate that many members  
12 of the public may wish to share views.  
13 I assure you we will give you that  
14 opportunity to give us your views on  
15 the tax incentive programs and then to  
16 comment on the evidence that we have  
17 gathered so far and to further inform  
18 us about the direct impact of these  
19 programs on taxpayers and companies  
20 around the state. So we will make  
21 public announcements about those  
22 sessions using the same processes as we  
23 had for this one.

24 So for now, I thank you all very  
25 much for attending, and we are -- the

J. Whiten  
task force is in recess.  
(Time noted: 3:23 p.m.)

J. Whiten

INDEX:

WITNESS	EXAM BY:	PAGE:
G. Kami	Mr. Williams	26
P. Degnan	Mr. Walden	78
J. Goodman	Mr. Quinones	171
J. Whiten	Ms. Patel	240

J. Whiten

CERTIFICATE

I, MARY F. BOWMAN, a Registered Professional Reporter, Certified Realtime Reporter, and Notary Public do hereby certify:

The foregoing is a true record of the testimony given by in these proceedings.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

In witness whereof, I have hereunto set my hand this 29th day of March, 2019.

\_\_\_\_\_  
MARY F. BOWMAN, RPR, CRR

A				
<b>a m (1)</b> 2:6 <b>ability (1)</b> 284:23 <b>able (15)</b> 7:22 99:18 134:12 143:6 187:20 189:21 201:14 203:9 207:9 209:4 222:24 267:9 271:10 284:18 285:20 <b>absolute (1)</b> 88:17 <b>Absolutely (1)</b> 235:13 <b>abstract (1)</b> 259:5 <b>abundantly (2)</b> 105:16 148:23 <b>abuse (2)</b> 10:15 80:21 <b>academic (2)</b> 211:6 228:5 <b>Accelerated (1)</b> 14:16 <b>accept (2)</b> 117:11 120:16 <b>acceptable (3)</b> 155:11 238:9,14 <b>accepted (2)</b> 113:23 155:3 <b>access (1)</b> 69:18 <b>accessible (3)</b> 79:6,14 135:6 <b>accompanied (1)</b> 27:2 <b>accompanying (1)</b> 52:4 <b>accomplishments (2)</b> 112:19 113:5 <b>account (1)</b> 16:18 <b>accountability (3)</b> 19:2 112:15 237:6 <b>accounting (5)</b> 113:20,23 159:8 160:16 216:9 <b>accounts (1)</b> 83:2 <b>accuracy (1)</b> 273:23 <b>accurate (5)</b> 120:25 130:5 131:16	131:17 136:5 <b>accurately (1)</b> 145:24 <b>achieve (6)</b> 67:4 95:19 179:22 187:24 190:17 245:10 <b>achieved (1)</b> 179:9 <b>achieving (2)</b> 223:12 224:8 <b>acronym (3)</b> 5:2 40:11,11 <b>act (5)</b> 4:14 47:8 50:3 240:21 244:8 <b>action (30)</b> 9:12,24 28:9 38:6,21 39:2 91:20 92:14,17 93:2,12 94:21,25 108:3 138:7,11,16 138:17 139:2,23 140:22 143:24 144:13,16 147:20 158:2,16 166:7 199:13 300:15 <b>actions (2)</b> 113:14 115:8 <b>active (3)</b> 105:3 166:6 246:12 <b>activity (2)</b> 197:5 208:18 <b>acts (1)</b> 6:9 <b>actual (5)</b> 224:6 230:11 259:9 270:15 277:25 <b>adapt (1)</b> 143:7 <b>add (4)</b> 170:21 247:16 254:14 263:19 <b>added (1)</b> 114:15 <b>addition (11)</b> 13:10 19:24 80:9 115:11 119:10 182:6 188:13 241:4 261:19 275:7 279:10 <b>additional (11)</b> 13:20 23:23 88:3 121:10 182:16 234:3 235:7,20 246:19 274:9 287:7 <b>additionally (1)</b>	235:15 <b>address (1)</b> 162:2 <b>addressed (2)</b> 273:14 275:8 <b>addressing (1)</b> 275:7 <b>adequate (3)</b> 112:18 118:15 135:21 <b>adequately (1)</b> 224:21 <b>adieu (1)</b> 26:8 <b>administer (3)</b> 84:13 157:21 171:9 <b>administered (2)</b> 122:10 220:7 <b>administering (7)</b> 82:10 84:6 176:16 207:16 217:24 218:24 221:2 <b>administers (1)</b> 227:7 <b>administrating (1)</b> 176:20 <b>administration (2)</b> 30:5 226:24 <b>administrative (7)</b> 115:8 208:6 209:3 214:17 217:3 218:2 225:20 <b>advantage (3)</b> 9:2 212:18 217:14 <b>adversarial (1)</b> 95:18 <b>adverse (1)</b> 96:16 <b>adversely (1)</b> 77:6 <b>advice (4)</b> 53:17 65:13,16,19 <b>advise (1)</b> 33:9 <b>advised (8)</b> 29:2,10 52:5,15 63:20 65:5 98:6 100:2 <b>advising (2)</b> 31:11 71:2 <b>affairs (1)</b> 31:20 <b>affect (3)</b> 179:5 227:14 231:16 <b>affidavit (2)</b> 15:8 276:6 <b>affidavits (1)</b> 16:7	<b>affirm (4)</b> 26:17 77:19 171:10 240:3 <b>afford (1)</b> 187:20 <b>affording (1)</b> 170:12 <b>afternoon (4)</b> 169:2,4 240:11,12 <b>agencies (19)</b> 15:23 80:24 84:11 159:22,24 161:6 162:3 176:17,20 180:17 185:11 201:6 207:12,22 214:17 218:24 220:7,9 228:13 <b>agency (36)</b> 6:3 79:25 83:7,9,10 83:17 84:8 85:16 95:12 96:6 120:16 140:8 142:5,16 143:5 157:20 158:25 159:18 160:8 176:21 188:12 195:15 199:22 200:14,19 200:21 201:4 202:23 213:7,7 217:23 218:10,24 227:7 228:8 280:8 <b>agendas (1)</b> 243:22 <b>agents (1)</b> 47:2 <b>aggregate (1)</b> 207:5 <b>ago (3)</b> 29:5 271:7 282:4 <b>agree (4)</b> 100:25 105:17 139:19 258:13 <b>agreed (6)</b> 16:25 17:7 121:10 126:24 158:8 170:3 <b>agreement (7)</b> 23:22 61:14 115:14 137:10 145:4,5 217:22 <b>agreements (1)</b> 144:2 <b>ahead (6)</b> 35:2 41:20 52:25 59:23 63:15 226:5 <b>aimed (1)</b> 283:12	<b>aims (1)</b> 245:10 <b>airline (1)</b> 31:5 <b>aisle (1)</b> 293:16 <b>align (2)</b> 269:16,16 <b>allegations (10)</b> 28:13 29:8 38:17 104:4,14 109:4,17 110:7,10 167:20 <b>allege (3)</b> 46:25 62:9 66:23 <b>alleged (5)</b> 23:11,14 46:20 106:6 281:24 <b>alleviate (1)</b> 170:19 <b>allocate (1)</b> 270:11 <b>allow (10)</b> 14:25 15:4 146:9 157:20 192:25 193:6,12 214:17 285:9 288:22 <b>allowed (2)</b> 94:5 253:3 <b>allowing (1)</b> 286:18 <b>allows (2)</b> 5:24 216:18 <b>alternative (7)</b> 56:2,3 63:21 64:15 66:25 68:19 198:3 <b>alternatives (8)</b> 50:20,21,23 52:7 55:24 66:10 194:18 194:19 <b>amendment (1)</b> 248:3 <b>amendments (1)</b> 248:6 <b>amount (32)</b> 21:25 22:14 44:2,22 54:13 80:11 85:2,19 89:14 141:25 142:6 149:3 150:15 151:10 185:9 188:9 189:10 230:9 245:12 247:12 249:15 250:7 257:21 259:25 260:4 273:4 275:12 275:24,25 278:3,6,8 <b>amounted (1)</b>

17:10 <b>analogous (1)</b> 201:22 <b>analysis (43)</b> 32:20,24 33:4 35:11 39:21 45:14 55:2,7 55:14,25 56:7,13,15 62:25 63:11,25 64:5 64:22 67:25 80:16 86:14 91:10 107:22 130:14,18,20 131:15 132:10,15 132:21,24 134:6,13 134:17 158:9 221:17 226:12 227:12,19 243:18 243:21 272:3 276:18 <b>analyst (1)</b> 30:22 <b>analysts (2)</b> 13:11 104:7 <b>analyze (4)</b> 113:10 176:6 177:23 243:15 <b>analyzed (1)</b> 161:18 <b>and/or (1)</b> 145:5 <b>anecdotes (1)</b> 296:3 <b>angry (1)</b> 108:25 <b>announcements (1)</b> 297:21 <b>announcing (1)</b> 14:14 <b>annoying (1)</b> 110:20 <b>annual (12)</b> 14:20 15:12 42:21 144:3 147:2 187:13 188:2 229:20 279:22 281:2,9 282:14 <b>answer (19)</b> 60:13 66:16 90:5 91:12 92:23 99:8,12 99:24 109:19,23 110:12 125:10 137:19,20 139:14 140:4 166:14 203:9 235:7 <b>answering (1)</b> 63:16 <b>anticipate (1)</b>	66:17 <b>antifraud (1)</b> 19:12 <b>anybody (5)</b> 36:17 129:12 172:25 259:19 294:22 <b>anyway (1)</b> 108:14 <b>apologize (7)</b> 45:19 96:10 116:4 133:24 149:6 214:25 252:13 <b>apparently (1)</b> 136:11 <b>appear (4)</b> 65:7 129:23 153:2 169:9 <b>appearance (2)</b> 13:4 77:4 <b>appeared (1)</b> 221:22 <b>appearing (1)</b> 162:11 <b>appears (7)</b> 106:25 124:22 125:2 128:20,23 135:24 136:19 <b>applicant (1)</b> 108:6 <b>applicant's (1)</b> 119:20 <b>applicant-supplied ...</b> 232:23 <b>applicants (9)</b> 10:13 107:15 112:23 113:19 120:10,14 122:11 160:14 287:7 <b>application (44)</b> 12:17 43:10 45:15,25 47:18,22 48:9,14 49:20 50:2,18,19 51:18,24 52:3,8,19 53:7,8 55:4,15 57:19,22 58:19 60:21 61:5 63:23 69:11,17 70:2,8 71:15 72:3,3 73:17 118:17 119:19 131:3 236:19 240:25 260:11 263:20 290:22 291:18 <b>applications (9)</b> 27:23 54:21 108:18 122:22 128:18,22	213:5 221:8 291:3 <b>applied (6)</b> 14:12 18:8 48:6 177:6 222:3 262:10 <b>applies (3)</b> 118:20 184:10 228:10 <b>apply (8)</b> 6:13 7:2 207:21 210:3 260:21 263:16,18 290:10 <b>applying (3)</b> 12:5 203:4 245:18 <b>appointed (1)</b> 3:16 <b>appointees (2)</b> 204:6,7 <b>appreciate (4)</b> 16:21 134:2 171:19 297:11 <b>approach (16)</b> 94:23 174:17 192:10 198:3,8,10 203:25 211:22 217:2 237:19,25 248:14 251:8 264:12 269:9 269:14 <b>approaches (1)</b> 227:22 <b>appropriate (11)</b> 18:14 23:4 80:17 83:11 85:24 113:18 113:21 115:6 142:25 270:25 271:3 <b>appropriating (1)</b> 271:8 <b>appropriation (1)</b> 270:15 <b>appropriations (4)</b> 188:7 202:21 271:6 281:10 <b>approval (9)</b> 47:6 58:8 87:21 124:16 290:4,5,9,20 291:6 <b>approve (2)</b> 11:7 291:2 <b>approved (16)</b> 8:11 87:7,14,17 108:14 115:9 134:8 134:21 135:9 230:16 243:24 245:22 249:17 256:4 278:15 292:19 <b>approximately (9)</b>	38:3 40:22 43:5 45:8 48:8 75:7 87:4,8 258:2 <b>April (5)</b> 28:7 38:5 48:11 158:3 248:24 <b>arbitrary (1)</b> 291:18 <b>area (14)</b> 34:4 182:3 202:11,17 225:17 238:10,11 262:16 268:12 277:4 284:5,5 287:3 292:6 <b>areas (22)</b> 5:10 161:4 172:12 174:19 178:23 205:24 206:16,19 229:5 234:10 236:3 237:8,9 259:12 268:21 269:9 271:22 279:10,12 291:12,21 293:10 <b>argue (1)</b> 292:7 <b>argument (4)</b> 143:3 163:13 164:6 258:12 <b>arising (1)</b> 39:5 <b>arm (1)</b> 200:5 <b>arming (1)</b> 34:10 <b>arms (1)</b> 257:7 <b>ARP (4)</b> 14:17,18 15:7 16:3 <b>articulate (1)</b> 292:22 <b>ascended (1)</b> 20:18 <b>aside (1)</b> 188:10 <b>asked (21)</b> 62:10,19,20,25 63:11 63:17,24 64:5,22 70:19 92:7 97:14 98:11,17,23,24 123:23 129:2 166:24 281:22 291:10 <b>asking (6)</b> 88:13 93:14 106:2,4 144:9,18 <b>asks (1)</b>	230:4 <b>aspect (2)</b> 15:16 137:3 <b>aspects (6)</b> 22:4 92:25 138:25 176:10 233:20,21 <b>assembly (1)</b> 283:11 <b>asserted (1)</b> 112:22 <b>assess (8)</b> 27:22 112:19 113:17 119:24 175:7 179:6 194:24 211:12 <b>assessing (3)</b> 209:20,22 213:5 <b>assessment (5)</b> 132:14 198:9 216:12 224:20 226:23 <b>assessments (3)</b> 104:21 201:12 210:16 <b>assist (2)</b> 36:6 127:19 <b>assistance (5)</b> 25:8 47:7 58:9 285:4 287:9 <b>assisted (2)</b> 3:23 4:5 <b>associated (1)</b> 55:10 <b>assume (10)</b> 6:13 125:20 147:6,18 163:12 164:5,14,22 164:23 290:10 <b>assumes (1)</b> 232:21 <b>assuming (2)</b> 148:8 290:21 <b>assumption (2)</b> 163:11,20 <b>assumptions (2)</b> 163:6 165:2 <b>assurances (1)</b> 225:9 <b>assure (1)</b> 297:13 <b>assured (1)</b> 18:6 <b>astounding (1)</b> 287:11 <b>at-risk (9)</b> 120:8,11 121:4 124:15 254:16 264:3,7 265:5,16 <b>Athens (1)</b> 30:6
--	---	---	---	---

<b>Atlantic (4)</b> 222:13 236:16 261:13 261:19 <b>attempt (1)</b> 254:2 <b>attempts (1)</b> 279:19 <b>attend (1)</b> 170:8 <b>attended (1)</b> 108:17 <b>attending (2)</b> 270:20 297:25 <b>attention (6)</b> 81:23 101:14 242:6 247:22 253:12 289:15 <b>Attorney (5)</b> 14:23 18:13,13 23:3 153:24 <b>Attorney's (1)</b> 23:4 <b>attorneys (2)</b> 26:10 27:3 <b>audit (104)</b> 8:10 9:19 13:2 24:8 24:18 78:24,25 79:10 80:23 81:24 81:24 82:6,7,16,19 82:20,21,22,24 83:5 83:15,22 85:9,11,18 86:16 89:24 90:13 90:15,24 91:2,15,16 91:22 92:4,10,12,15 93:19,23 94:3,9,16 94:16,17 95:7,10,22 95:24 96:3,5,9,14 97:19,21 98:4,10 100:5,12,14,17,22 100:23 101:9,10 102:24 105:3 109:9 109:22 110:13,15 111:13,21 112:5,8 114:7 123:15 126:19 127:4 134:22 135:13 137:24 143:22 145:14 146:4 148:14 149:19 152:14 154:19 158:15 160:6,12,20 160:21 161:19 166:25 167:2,11,22 208:19 227:24 228:18 230:15 280:13	<b>audited (3)</b> 9:6 95:11 99:22 <b>auditee (10)</b> 92:11,16 94:2 95:11 95:20 96:6 100:25 101:3 123:20 126:20 <b>auditees (3)</b> 90:15 126:21 161:9 <b>auditing (3)</b> 98:8 106:8 159:25 <b>auditor (18)</b> 9:5,24 89:23 91:4,6 91:25 92:13 97:24 123:24,25 125:24 128:4 142:12,12 152:15 160:4 161:3 233:18 <b>auditor's (10)</b> 91:13,18 94:14 97:2 124:9,13 152:22,23 153:10 166:10 <b>auditors (1)</b> 90:2 <b>audits (12)</b> 80:23 81:3 85:15 93:11,13 125:22 126:22 159:22 160:16 161:10 200:23 218:14 <b>authored (1)</b> 172:5 <b>authority (12)</b> 6:5 17:25 39:8 47:5 58:8 81:22 82:10 84:5 102:25 107:6 140:6 199:19 <b>Authority's (2)</b> 1:6 3:8 <b>authorization (1)</b> 228:14 <b>authorizations (1)</b> 190:4 <b>authorize (1)</b> 189:14 <b>authorized (3)</b> 219:6 221:21 222:14 <b>authorizes (1)</b> 195:15 <b>authorizing (1)</b> 189:10 <b>available (10)</b> 116:16 134:14 141:6 172:24 202:24 219:2 243:5,13 296:20,22	<b>avenue (1)</b> 280:14 <b>average (4)</b> 250:7 252:5 265:3 291:24 <b>Avni (3)</b> 1:18 4:6 20:12 <b>avoiding (1)</b> 291:13 <b>award (40)</b> 5:21,25 17:9 40:20,24 42:20 43:8 44:13 45:9 48:7 53:12 56:9 69:21,21 70:3 71:22,25 72:4,12 73:2,18,18 84:20 86:17 87:20 89:14 113:13 115:14 120:10 121:18 131:10 134:10,21 134:24 137:10 144:2 146:12 155:21 200:7 247:5 <b>awarded (4)</b> 40:19 44:3,5 249:16 <b>awardee (6)</b> 86:24 113:8 137:11 137:12,13 146:13 <b>awardees (9)</b> 87:23 88:2,4 89:13,17 112:25 113:4 140:25 141:3 <b>awarding (2)</b> 207:25 253:4 <b>awards (14)</b> 115:17 135:3,17 137:16 140:17 245:12 247:13 248:18 249:19 251:22 252:11 256:4,20 265:15 <b>aware (21)</b> 28:7 38:11 43:22 57:16 66:8 69:14 86:8 90:25 91:7,17 96:17 104:22 110:7 111:8,11 141:10 164:10 173:19 193:24 241:17 289:25 <hr/> <b>B</b> <hr/> <b>B (5)</b> 1:13 5:7 112:18 238:5 276:24 <b>bachelor (1)</b>	29:25 <b>back (41)</b> 44:18 48:19 57:2 58:15 69:22 93:19 93:21 95:2 101:4 102:9 123:25 125:12 132:13 136:4 137:14,25 138:12 139:3,19 147:4,9,21 152:17 169:5 197:13 198:25 199:15 208:9 210:2 225:2 244:12,21 248:9 249:13 256:2,7 264:14 271:19 278:17,23,25 <b>back-up (1)</b> 15:15 <b>backdated (1)</b> 275:2 <b>background (3)</b> 29:18,24 204:9 <b>bad (1)</b> 80:15 <b>baked (1)</b> 295:7 <b>balance (2)</b> 83:2 189:19 <b>balanced (1)</b> 245:11 <b>balances (1)</b> 228:12 <b>balancing (1)</b> 187:16 <b>bang (1)</b> 184:15 <b>bankrupt (1)</b> 222:15 <b>bankruptcy (2)</b> 197:22 277:7 <b>bare (1)</b> 262:23 <b>bargain (4)</b> 131:4,12 141:2 200:10 <b>barrier (1)</b> 263:23 <b>base (2)</b> 262:24 287:5 <b>based (29)</b> 5:15 18:9 40:23 51:5 62:2 64:11 66:2 74:16 92:20 100:6 118:12 134:8,13 136:2,19 142:3	146:13 151:18 160:11 202:19,24 257:19 258:6 263:9 271:6 284:21 285:9 289:23,24 <b>baseline (16)</b> 118:15 119:20,22 121:8,13,18,25 122:9 125:4 127:8 127:20,24 128:5 162:21 262:6,17 <b>basic (5)</b> 178:10 195:12,17 243:17 262:22 <b>basically (5)</b> 37:8 110:24 115:21 116:8 243:19 <b>basis (8)</b> 42:21 50:5 147:8 149:2 187:13,18 193:4 229:20 <b>bat (1)</b> 273:19 <b>bear (1)</b> 211:25 <b>began (6)</b> 51:11 127:21 242:16 242:23 244:4 254:15 <b>beginning (11)</b> 21:23 101:22 105:20 119:18 127:14 221:7 241:13 244:15,24 248:24 297:3 <b>begun (1)</b> 17:11 <b>behalf (4)</b> 36:8 39:3 75:15 78:17 <b>BEIP (31)</b> 40:9,12,19,20,24 41:7 41:13 42:4,6,12,16 42:19 43:2,7,24 44:4,6,13 45:16,18 46:16 53:25 54:6,7 54:10,15,18 69:21 70:3 119:13 271:5 <b>belabor (2)</b> 117:24 165:25 <b>belief (2)</b> 65:18 103:5 <b>believe (28)</b> 6:14 14:12 15:2 22:11 38:20 49:10 76:2 97:6,8 119:15 120:22 132:8 146:2
--	--	---	---	--

149:18,20 151:5,19 158:3,13 171:6 255:9 256:3 259:13 259:24 268:21 271:23 285:25 291:4 <b>believed (1)</b> 92:25 <b>believes (2)</b> 161:5 170:20 <b>beneficiaries (8)</b> 13:23 14:2,8,12 16:24 18:3,12 169:24 <b>benefit (58)</b> 13:14 74:23 107:21 107:23 108:2 130:14,17,20,21 131:4,12,15,19 132:10,15,24 133:14 134:6,13,17 135:22 146:12,15 181:6 182:16 183:4 184:12 186:9 191:20 194:23 200:9 219:15 245:11 255:5 259:5 259:9,14,16,18 260:10 263:23 266:5,6 269:7 270:19 272:3,7,8,25 273:3 274:7 275:11 275:24 276:17,18 277:25 278:4,10 <b>benefiting (2)</b> 206:19 263:10 <b>benefits (26)</b> 18:8 112:22 133:4,17 178:12 184:21 186:10 190:18 192:4 197:13 202:15 205:10 209:2 211:16 221:21 230:21 232:9 241:9 254:25 259:24 272:12,22 273:18,22,24 274:16 <b>best (26)</b> 10:5 25:13 35:23 41:6 44:7 55:19 56:16 57:24 68:5 69:4 83:13 103:4 123:7 142:3 161:24 172:8 173:4 175:13 209:6 209:21 219:12 225:13,16 234:7	280:15 285:23 <b>better (15)</b> 12:15 94:22 99:14 126:2 157:12,20 175:23 204:15 206:16 211:22 220:25 225:8 234:13,20 293:5 <b>beyond (7)</b> 15:11 79:9 93:4 98:25 176:20 189:22 192:5 <b>bifurcate (1)</b> 68:19 <b>big (6)</b> 8:6,7 150:22 221:22 253:22 279:16 <b>biggest (1)</b> 254:13 <b>bill (2)</b> 11:5 295:8 <b>billion (7)</b> 8:11 189:14 230:17 232:3 251:22 270:7 270:9 <b>billions (1)</b> 256:18 <b>bills (3)</b> 10:24 26:3 28:6 <b>bind (1)</b> 14:22 <b>binder (10)</b> 96:18,19,21,24 101:14 106:12 110:18 111:16 124:3 125:18 <b>bit (47)</b> 36:6 47:21 88:11 95:9 98:15 110:6 114:22 115:19 125:17 127:11 133:25 140:19 145:8 148:18 149:13 154:17 188:22 208:9 243:6,14 248:15 251:11 253:7 254:25 255:3 255:4,6 256:10 259:7 260:13,19 262:8 264:2,5,9 268:20 271:25 273:14 276:8 278:21 279:15 282:8 284:7,16 287:17 293:24 295:23	<b>blank (1)</b> 129:7 <b>blended (2)</b> 56:3,18 <b>blessing (1)</b> 187:3 <b>blood (1)</b> 300:15 <b>Bloustein (1)</b> 206:5 <b>blue (1)</b> 183:21 <b>board (10)</b> 61:16 120:20 122:10 145:4 203:12 210:24 211:15,17 213:14 251:18 <b>boards (1)</b> 212:25 <b>body (3)</b> 21:2 177:11 208:25 <b>Bogizici (1)</b> 30:3 <b>bonus (3)</b> 248:14 251:7 261:25 <b>bonuses (7)</b> 246:19 254:12 255:5 260:17 262:6 263:6 263:17 <b>books (1)</b> 232:13 <b>bottom (2)</b> 257:15 286:23 <b>Bowman (4)</b> 1:22 2:11 300:6,22 <b>box (1)</b> 96:12 <b>boxes (1)</b> 229:3 <b>BRAG (3)</b> 144:3,25 153:11 <b>branch (6)</b> 80:12,24 84:9 140:9 204:6 228:8 <b>break (17)</b> 10:18 88:10 103:7 110:21 115:18 135:5 148:21 168:10 219:15 249:16 262:20,20 264:15 266:25 272:18 274:4,8 <b>breaking (2)</b> 111:23 114:21 <b>breaks (5)</b> 6:13 7:2,18 8:5,7	<b>brief (2)</b> 168:10 169:8 <b>briefly (2)</b> 246:5 260:16 <b>bring (5)</b> 107:21 152:10 199:25 211:24 269:21 <b>bringing (2)</b> 266:11 271:18 <b>brings (3)</b> 39:8 161:7 172:3 <b>broad (5)</b> 210:19,20 284:21 285:9 287:5 <b>broader (3)</b> 178:13 182:9 261:12 <b>broadest (1)</b> 253:19 <b>broadly (2)</b> 208:25 234:9 <b>Broadway (1)</b> 68:22 <b>brought (6)</b> 36:8,13,23 87:22 213:13 246:16 <b>buck (1)</b> 184:15 <b>budget (25)</b> 176:24 186:12,13 187:2,12,16 189:19 203:3 204:9 212:4,6 212:10 222:21 223:16 227:14 229:21 230:2,3 231:12,16 241:25 253:14 256:14 259:22 282:18 <b>budget-making (1)</b> 271:20 <b>budgeting (2)</b> 259:20 281:5 <b>build (2)</b> 176:6 263:5 <b>building (2)</b> 194:9 233:25 <b>builds (1)</b> 229:4 <b>built (3)</b> 142:23 180:4 212:23 <b>bullet (3)</b> 103:17,19 104:3 <b>burden (1)</b> 21:4 <b>burdensome (1)</b> 14:10 <b>Burlington (1)</b>	261:13 <b>business (31)</b> 7:9,12 30:4,16 33:10 34:2,5,10,11 40:13 40:15 107:17 127:25 153:11 183:14,18 185:4,12 190:17 191:20,23 197:18 199:24 200:2 208:14 211:10,12 212:20 217:6 277:5 285:5 <b>businesses (34)</b> 4:17 127:23 174:9,23 178:11 181:10,22 181:22 182:21 184:21,24 188:9 190:22 197:16 201:25 202:5 205:5 205:14 206:4 207:19 208:2 209:2 209:5 210:4,6,6 213:20 214:4,21 217:9,16 218:7 227:5 234:14 <b>busy (1)</b> 139:9 <b>buying (3)</b> 192:8,11,20 <hr/> <b>C</b> <hr/> <b>C (3)</b> 5:8 31:11 112:24 <b>C-Suite (1)</b> 34:16 <b>cabins (1)</b> 290:21 <b>calculate (1)</b> 107:20 <b>calculated (2)</b> 131:9 134:18 <b>calculation (6)</b> 107:25 135:22 151:3 151:15,23 152:4 <b>calculations (2)</b> 133:2,23 <b>call (12)</b> 6:6 17:4 18:16 21:8 22:21 26:9 40:19 77:16 86:21 145:20 172:10 291:13 <b>called (8)</b> 6:4 56:3 81:9,15 97:7 166:12 167:13 248:23 <b>calling (2)</b>
---	---	---	---	--



267:21 296:14 <b>calls (2)</b> 209:18,23 <b>Camden (25)</b> 5:17 150:23 164:11 164:14 206:2 236:13,22 251:12 251:13,15,21 252:2 252:3,5 261:13,19 261:21 269:10 273:11 274:6,16 275:3 291:22 292:6 292:19 <b>cancels (1)</b> 5:7 <b>cap (20)</b> 188:3 189:8,11,25 207:5 247:4,6,9,12 247:15,18,20,25 254:8 263:4,7 270:3 270:7,8,15 <b>capacity (2)</b> 176:6 229:4 <b>Cape (1)</b> 261:13 <b>capita (1)</b> 186:11 <b>capital (13)</b> 5:9 130:24 236:10 238:20,25 239:4,11 239:16,19 259:12 288:11 292:5,20 <b>caps (6)</b> 188:3,13,22 247:5,17 269:25 <b>capture (1)</b> 100:20 <b>cards (1)</b> 268:9 <b>care (2)</b> 239:4,19 <b>career (1)</b> 89:24 <b>carefully (2)</b> 131:9,9 <b>cares (1)</b> 257:11 <b>Carolina (1)</b> 204:5 <b>carry (1)</b> 3:17 <b>carry-forward (1)</b> 196:9 <b>case (21)</b> 12:20 23:18,20 83:7 85:17 90:6,18 95:21	95:25 165:12 167:10 186:6 189:5 189:7 190:15 196:25 210:19 222:13 228:25 283:8 284:25 <b>cases (11)</b> 90:2 188:5,11 190:12 191:6 193:5 227:23 228:3,7 229:3 261:6 <b>cash (2)</b> 194:19,25 <b>casino (2)</b> 222:12,15 <b>catch-all (2)</b> 97:18 279:10 <b>categories (1)</b> 289:18 <b>category (2)</b> 137:22 261:25 <b>caused (1)</b> 47:3 <b>Census (1)</b> 5:16 <b>center (4)</b> 26:10 106:16 241:25 252:2 <b>Central (1)</b> 269:14 <b>cents (2)</b> 183:20,23 <b>CEO (42)</b> 33:10,12 36:19,21 37:21,25 39:6,24 43:19 50:4 51:10 52:2,4,16 53:9,16 58:6,16 59:11,12,19 59:20,24 60:3,17 62:3 64:2,4 65:20 66:6 70:8,23 71:17 74:8 102:4,5 126:16 156:5 167:8,9 264:8 288:9 <b>CEO's (4)</b> 37:14 57:13 70:25 71:7 <b>certain (12)</b> 5:9 44:2 80:11 94:9 96:8 115:8 136:10 145:3 156:2 189:10 190:21 290:7 <b>certainly (27)</b> 24:14 69:18 84:24 85:17 92:24 117:5 122:24 124:22,25 142:22 143:2,8	148:2 155:5 158:25 189:5 201:11 206:25 216:20 220:24 226:2 237:22 245:15 251:19 285:16 289:19 291:19 <b>certainty (1)</b> 88:17 <b>CERTIFICATE (1)</b> 300:4 <b>certification (26)</b> 12:17 14:21 15:12 47:22 52:2,4 53:16 58:7,16,21 59:12,19 59:25 60:3 66:6 70:23,25 71:18 154:12 156:4,5,7,8 156:22 167:17 267:15 <b>certifications (3)</b> 27:24 53:10 156:3 <b>certified (4)</b> 2:12 89:25 264:8 300:7 <b>certifies (1)</b> 127:25 <b>certify (6)</b> 42:19 59:12 155:10 156:24 300:9,13 <b>certifying (4)</b> 155:17,19,20 156:16 <b>cetera (3)</b> 104:15 113:3 187:6 <b>CFO (9)</b> 30:11,13 33:21 48:20 49:5,12,16 51:7 64:12 <b>chairs (1)</b> 166:13 <b>challenge (4)</b> 8:3 15:25 217:19 224:25 <b>challenges (2)</b> 190:12 225:2 <b>chance (1)</b> 60:23 <b>change (9)</b> 107:25 109:19,23,24 157:8 159:18 254:24,25 275:18 <b>changed (13)</b> 170:6 236:24 237:7 241:8 252:25 265:4 265:9 273:10,11 274:23 275:20,22	292:16 <b>changes (5)</b> 119:25 183:9 226:21 243:10 254:6 <b>characterization (2)</b> 85:6 120:19 <b>Charitable (2)</b> 25:6 171:22 <b>charity (1)</b> 25:7 <b>chart (1)</b> 229:23 <b>charters (1)</b> 162:4 <b>cheap (1)</b> 185:21 <b>cheat (1)</b> 266:10 <b>check (7)</b> 5:22 96:13 122:14,16 125:11 219:3 248:9 <b>checked (1)</b> 267:12 <b>checking (5)</b> 136:14,18 210:9 225:4 232:22 <b>checklist (1)</b> 116:23 <b>checks (2)</b> 204:16 229:2 <b>cheerleader (1)</b> 199:25 <b>Chen (41)</b> 1:14 3:2,3 19:5 22:25 26:15 75:16,17 76:4 77:18,23 158:18,21 160:19 162:10,18 168:9 169:4,13 171:5,17 193:23 194:12 235:20,22 238:17 239:20,22 239:23,24 240:8,18 251:25 287:13 291:8 294:6,9,12,20 296:11,18 <b>Chen's (2)</b> 20:11 172:22 <b>chief (5)</b> 20:19 33:13 48:21 106:3 256:12 <b>choice (4)</b> 22:20,21 64:20 295:6 <b>choices (2)</b> 178:21 295:6 <b>choose (1)</b> 271:4	<b>chosen (1)</b> 54:11 <b>circumstance (1)</b> 144:11 <b>circumstances (1)</b> 80:18 <b>cities (7)</b> 5:14,16 206:4,10,12 236:12 257:7 <b>citizen (1)</b> 36:8 <b>city (26)</b> 56:5,19 59:22 60:18 61:13,15,23 62:11 62:22 63:2,9,13 64:19 67:25 72:16 72:21 75:25 222:13 236:16 242:9,11 252:3 261:20,21 265:6 274:7 <b>claims (2)</b> 39:9 104:20 <b>clarify (8)</b> 36:4 53:2 69:8 148:20 149:22 174:6 235:25 252:12 <b>clarity (3)</b> 179:7,18 292:22 <b>class (3)</b> 225:13,14,17 <b>clause (1)</b> 283:14 <b>claw (7)</b> 137:14,25 197:13 199:14 276:22 278:17,23 <b>claw-back (1)</b> 199:4 <b>clawback (8)</b> 141:8 144:15 198:19 274:10 275:14,17 276:23 279:6 <b>clawbacks (11)</b> 198:16 273:6 277:2 277:11,11,12,13 278:12,13 289:12 289:13 <b>clawed (1)</b> 198:24 <b>clawing (1)</b> 278:25 <b>clear (35)</b> 6:11 10:2 14:18 39:15 76:11 92:7 93:6,20 102:2 104:25 105:16 107:12
--	--	--	---	---

117:17 123:4 124:8 136:21 141:4,14 148:23 149:12 156:14 160:19 205:20 214:18 234:22 237:23 238:3 239:18 247:23 250:5 252:4 272:10 277:17,19 293:22 <b>clearer (1)</b> 179:20 <b>clearly (1)</b> 66:25 <b>clip (1)</b> 249:18 <b>close (6)</b> 40:15 68:13 152:11 157:25 242:6 280:22 <b>closely (4)</b> 95:10,16,23 96:2 <b>closer (1)</b> 278:21 <b>closing (1)</b> 200:6 <b>clout (1)</b> 203:17 <b>cochair (1)</b> 19:25 <b>cohort (1)</b> 67:5 <b>coin (1)</b> 121:5 <b>colleague (2)</b> 26:13 293:16 <b>colleagues (1)</b> 24:3 <b>collect (1)</b> 113:18 <b>collected (3)</b> 114:8 145:17 179:13 <b>collecting (4)</b> 12:13 127:21 217:6 217:18 <b>collection (1)</b> 179:12 <b>collectively (1)</b> 274:15 <b>combination (3)</b> 56:4 141:8 194:11 <b>combine (1)</b> 255:22 <b>come (20)</b> 21:3 48:4,5,16 133:6 137:18 160:4	161:25 163:7 175:25 185:7 212:17 213:16 242:14 245:25 260:6 271:10 280:13 282:17 283:25 <b>comes (5)</b> 7:19 156:7,9 223:7 290:12 <b>coming (7)</b> 76:7,9 77:24 150:13 226:7 233:10 257:9 <b>commenced (1)</b> 73:17 <b>comment (1)</b> 297:16 <b>commented (1)</b> 92:24 <b>commenting (1)</b> 275:16 <b>commission (2)</b> 20:2,3 <b>commit (2)</b> 16:11 80:7 <b>commitment (7)</b> 189:18 224:23 229:16 230:6 231:25 232:4 239:10 <b>commitments (13)</b> 174:24 187:19 189:4 195:22 196:2 198:17 208:3 210:12 213:22 223:17 230:22 231:8 233:4 <b>committed (3)</b> 36:10 229:16 231:14 <b>common (6)</b> 126:19 177:24 178:2 198:25 224:11,24 <b>communications (1)</b> 104:6 <b>commute (2)</b> 48:24 49:3 <b>companies (86)</b> 6:12,25 8:25 10:11 11:7 12:4 14:25 15:14,15 16:2,5,24 17:15,19 21:16 22:10,21 23:10 27:22 28:2 41:9 87:5,9,13,17,19,22 88:2,15 89:4,6 90:9 108:20 139:20,24 140:23,25 147:22	154:11 158:7 174:11 181:6 182:19 185:13,23 190:5,14 192:5,8,11 192:12 198:11,16 198:20 202:12 207:21 208:17 209:19 210:9 212:9 214:8,20 216:23 219:6 221:14 222:25 230:12 231:4 232:19 233:3 241:3 245:2 262:18 264:24 278:3 284:18 285:2,8,11 285:19 286:18 287:8 289:8,17 296:7 297:19 <b>company (187)</b> 5:5,24 6:2 7:4,7,11,24 8:4 11:21 16:18 17:2 23:15 24:4 27:21 28:12,22 29:20 30:12,14,21 30:23,24 31:14,24 32:3,15,16 33:5,15 33:22 35:7,8,14 36:10 37:10,19 39:6 39:10,19 40:18,23 41:11 42:8,15,18,25 43:7,9,11,23 44:3,6 44:12,14,16,17 45:2 45:22 46:2,8,14,25 47:21,24 48:6,19,21 48:23 49:3,6,12,23 50:14 51:17,19 52:16,20 53:10,24 54:5,8,11,12,16 56:17 57:10,11 58:5 59:13 60:17 61:12 61:18 62:4,10,21 63:8,20,20 64:2,9 64:13 65:5,7,16,18 66:24 67:15 68:8,19 69:21 70:2,9 71:3 71:21 72:15 73:12 73:22 74:4,6 77:5 81:12 82:25 127:20 135:8 137:7 138:2,3 138:3,9 142:17 145:13 146:24 147:17 155:17,19 156:16 169:17 170:7 181:15,18 182:8,11,17 183:4,7 185:5,9,14 191:24	195:15,20 196:2,3,6 196:10,23 197:2,12 197:21 198:5,5 202:7 207:2 212:13 213:10 218:18 219:13,16 232:7 238:9 239:10 241:5 261:4 265:24 267:24 273:5 275:13 276:2,5,15 277:7 286:21 288:12,22 290:2,3 290:17 <b>company's (8)</b> 5:19 56:7 57:19 64:20 69:6 71:14 73:15 81:19 <b>comparable (1)</b> 108:8 <b>compare (3)</b> 81:19 152:24 245:14 <b>compared (1)</b> 291:13 <b>comparing (1)</b> 193:12 <b>compel (1)</b> 158:12 <b>compelled (2)</b> 105:14 284:3 <b>compelling (1)</b> 85:18 <b>compensation (2)</b> 56:23 68:16 <b>competing (3)</b> 108:7,11 181:21 <b>competitive (1)</b> 257:6 <b>complained (2)</b> 108:15,24 <b>complaint (39)</b> 28:8,13 29:8 35:6,16 35:20,25 36:3,14,18 36:24 38:4,12,15 40:4 41:17 46:21,24 47:11 55:13 57:4 58:3,17 59:5,8 60:5 60:5 62:9,20 66:23 68:11,12 70:13 106:13,24 109:5,8 109:14 166:4 <b>complete (3)</b> 79:4 134:6 152:21 <b>completed (1)</b> 124:18 <b>completely (3)</b> 24:22 101:23 139:11	<b>completion (3)</b> 91:2 100:14 128:2 <b>compliance (26)</b> 4:10 14:2 15:2 17:5 18:11 41:13 43:2,7 43:23 44:12,16 46:15 70:3 72:5,12 73:22 74:10,18 75:10 84:19 121:7 136:23 138:10 142:17 199:21 200:20 <b>compliant (7)</b> 14:13 27:22 42:13,15 117:15 139:21 158:8 <b>complicate (1)</b> 23:24 <b>complicated (12)</b> 7:23 10:6 111:25 116:21 119:7 139:10 161:16 213:23 215:7 234:24 272:15 282:25 <b>complied (1)</b> 92:16 <b>complies (1)</b> 282:10 <b>compliment (1)</b> 223:14 <b>comply (3)</b> 16:14 115:12 232:20 <b>complying (2)</b> 83:11 137:5 <b>component (1)</b> 112:2 <b>components (2)</b> 58:21 263:2 <b>comprehensive (7)</b> 9:19 14:6 78:25 81:5 122:14 126:24 280:9 <b>compromised (1)</b> 259:15 <b>comptroller (29)</b> 8:9 9:18,20 10:18 12:24 16:23 24:6,17 24:25 77:17 78:14 79:23 81:6,11 92:10 101:15 123:9 127:16 136:7 139:20 162:10 164:20 166:24 199:8 215:5,9 221:3 221:11 233:18
---	---	---	---	--

<b>comptroller's (9)</b> 25:4 79:24 85:11 100:19 143:22 152:3 224:4 230:14 232:2 <b>comptrollers (1)</b> 81:14 <b>concept (1)</b> 56:17 <b>conceptual (2)</b> 266:22 280:25 <b>concern (6)</b> 48:25 222:20,21 253:22 256:13 267:22 <b>concerned (1)</b> 100:4 <b>concerning (2)</b> 61:22 104:20 <b>concerns (4)</b> 37:5 70:5 170:7 285:17 <b>conclude (1)</b> 146:3 <b>concluded (6)</b> 91:25 94:17,18 131:13 146:6 167:22 <b>concludes (1)</b> 296:18 <b>concluding (1)</b> 234:6 <b>conclusion (12)</b> 84:21 92:20 100:17 117:22 118:12,12 136:11,17 146:19 173:21 193:20 241:18 <b>conclusions (12)</b> 24:19 28:16 93:23 111:4,10 114:4 129:15,22 148:11 228:15 260:7 295:18 <b>conclusive (1)</b> 22:24 <b>conclusively (2)</b> 146:9 157:16 <b>concussion (1)</b> 119:22 <b>conditions (5)</b> 143:5 153:21 178:14 185:25 202:19 <b>conduct (9)</b> 3:17 21:21 47:14 109:4 166:24	226:10 227:19 241:6 242:20 <b>conducted (10)</b> 20:7 64:14 85:8 90:23 90:24 125:21,23 142:2 193:11 284:15 <b>conducting (3)</b> 4:2 18:22 240:20 <b>conference (5)</b> 96:12,13 98:22,25 99:5 <b>conferred (1)</b> 146:12 <b>confidence (1)</b> 19:10 <b>confident (1)</b> 111:3 <b>confidential (1)</b> 283:6 <b>confine (2)</b> 79:11 93:18 <b>confines (1)</b> 81:21 <b>confirm (3)</b> 46:14 105:18 152:2 <b>confirmed (1)</b> 103:4 <b>confirms (1)</b> 233:4 <b>confront (1)</b> 22:22 <b>confusion (1)</b> 237:11 <b>connection (7)</b> 39:10 42:4 46:22 50:2 51:17 55:3 102:24 <b>cons (3)</b> 195:4 209:8 233:23 <b>consensus (1)</b> 271:10 <b>conservative (3)</b> 163:17,20 279:7 <b>consider (8)</b> 79:18 146:14 158:5 158:10 172:18 174:8,13 191:14 <b>considerations (7)</b> 175:14 180:9 188:15 191:17 203:16 214:8 228:12 <b>considered (8)</b> 50:11,22,24 55:9 62:5 71:3 91:15 260:17 <b>considering (4)</b> 49:6,8 68:9 143:9	<b>consistent (4)</b> 116:17 206:24 218:8 220:15 <b>consistently (3)</b> 34:19,20 217:17 <b>Constitution (1)</b> 17:23 <b>constraint (1)</b> 247:2 <b>consultant (11)</b> 46:3 51:16 57:17 63:19 65:5,13,17 66:23 69:5,10,14 <b>consultants (3)</b> 12:7 228:6 267:4 <b>consulted (3)</b> 76:17 77:10 90:7 <b>consulting (18)</b> 46:5,12 51:19,23 52:5 52:15 53:17,20,23 54:5 55:2 57:5,17 57:17,25 64:18 65:24 66:4 <b>contact (2)</b> 37:24 53:19 <b>contain (1)</b> 238:21 <b>contained (4)</b> 66:5 68:4 153:22 167:19 <b>contemplating (2)</b> 47:25 48:2 <b>contend (1)</b> 118:11 <b>contenders (1)</b> 233:22 <b>contentioned (1)</b> 272:19 <b>context (3)</b> 28:19 84:4 165:16 <b>contingent (2)</b> 197:7 198:4 <b>continual (1)</b> 127:18 <b>continue (10)</b> 8:8 11:2 72:25 162:16 243:6,14 250:15 296:13,15,25 <b>continued (4)</b> 9:14 73:18 252:10,22 <b>continuing (2)</b> 78:21 271:22 <b>contract (1)</b> 160:15 <b>contractors (1)</b> 214:11	<b>contradicted (1)</b> 69:16 <b>contributed (2)</b> 252:10,21 <b>control (6)</b> 93:9 103:23 160:9 234:18 253:17 289:21 <b>controlled (1)</b> 112:14 <b>controller (3)</b> 81:10,12,20 <b>controllers (1)</b> 81:15 <b>controlling (2)</b> 196:21 271:17 <b>controls (5)</b> 8:23 92:18 113:21 114:20 115:7 <b>convene (1)</b> 168:13 <b>convenient (1)</b> 296:23 <b>conversations (3)</b> 62:3 66:3 151:19 <b>Conversely (1)</b> 186:18 <b>cooperate (3)</b> 16:25 90:13,15 <b>cooperated (1)</b> 60:2 <b>cooperation (6)</b> 15:22 16:22 17:21 78:19,22 162:12 <b>coordination (1)</b> 280:22 <b>copies (1)</b> 96:11 <b>copy (3)</b> 103:18 110:16 172:25 <b>core (4)</b> 240:23 246:9 255:13 293:2 <b>corners (1)</b> 79:9 <b>corporate (11)</b> 4:9 5:6 10:13 15:19 18:23 31:20 32:19 32:23 84:10 194:3 249:2 <b>corporation (5)</b> 81:8,9 160:3 194:2 288:7 <b>corporations (6)</b> 19:14 245:17 258:24 267:5 268:8 285:12	<b>correct (155)</b> 27:3,4,6,7,10,11 30:17,20 31:16 32:13,24,25 33:5,6 33:14,16,19,22 34:5 34:6,12,17,18,19 35:12,15,21,22 36:11,12,14,15,19 37:2,3,10,15,16,22 37:23,25 39:17,18 39:22,23,25 40:2,5 40:6 43:20 44:9,21 45:9,10 46:6,9,10 46:13,16,17 48:3 49:13,18 50:15,16 50:25 51:8,9,20,21 53:14,17,18,20,21 54:2,3,19,20,23,24 55:20,21 56:10,11 56:21 57:14,15 58:10,11,13 59:14 59:15 62:22,23 64:23 65:11,13,14 65:21,22 66:14 67:9 67:16,17 68:2,3,6,7 68:10 69:2,3,6,12 69:17,22,23 70:3,4 71:7,8,20,22,23 73:3,4,14,14,19,20 74:20,24,25 75:11 75:12 87:16 93:12 112:6 119:14 129:19 135:23 138:23 158:9 173:12,15 247:14 249:23 250:11,14 252:7 260:12 282:2 282:6 288:5 296:10 <b>corrected (1)</b> 9:22 <b>correction (1)</b> 138:25 <b>corrective (15)</b> 9:12,24 91:20 92:14 92:17 93:2 94:20,25 138:7,11,16 139:2 147:20 158:2,16 <b>correctly (10)</b> 81:5 82:14 135:11 145:15 146:22 148:9 150:9,18 156:21 192:24 <b>corresponds (1)</b> 278:6 <b>corroborate (1)</b> 22:19
---	--	---	--	---

<b>corruption (1)</b> 20:4 <b>cost (38)</b> 67:5 150:7,13,19,23 151:2,12 162:23 163:14,24 164:3 165:2 178:17 184:14,22 185:9 188:17 196:14,21 223:22 229:20 230:11 231:19 232:13 233:5 234:4 234:19 245:22,23 249:20 250:2,25 251:19,21 260:9 263:24 291:23 295:23 <b>cost-benefit (6)</b> 55:2,14,25 56:12,15 67:25 <b>costing (3)</b> 187:15 188:19 223:18 <b>costs (12)</b> 108:23 164:11 175:9 183:3,5 188:3 197:3 259:21 269:21,24 271:16,17 <b>counsel (6)</b> 3:24 19:19 29:2 76:17 77:10 173:16 <b>count (1)</b> 213:24 <b>counterproposal (1)</b> 68:21 <b>counties (3)</b> 150:24 164:16 261:12 <b>counting (1)</b> 225:3 <b>country (9)</b> 172:6 177:3,14 222:12 224:16,25 228:24 231:10 258:11 <b>counts (1)</b> 217:14 <b>couple (27)</b> 25:2 90:21 94:19 107:11 108:9 118:2 128:9,25 132:3 135:7 143:15,19 149:23 151:9 163:6 167:3,6,7 189:8 197:9 229:8,14 241:13 256:18 273:25 274:2 282:23	<b>course (22)</b> 79:19 86:16,24 90:4 93:11 95:7,9,24 98:17 100:12 101:10 109:22 122:21 125:20 149:19 151:14 157:17 161:14 196:16 259:7 270:4 293:18 <b>court (3)</b> 23:17 28:9 106:18 <b>courts (1)</b> 90:19 <b>cover (3)</b> 26:5 126:3 174:4 <b>covered (1)</b> 233:12 <b>covering (1)</b> 15:9 <b>CPAs (1)</b> 90:2 <b>create (18)</b> 7:8,11 41:10 119:5 174:24 195:22 219:8 220:18 238:8 238:18,19 239:7 255:11 256:15 265:22 279:22 286:25 288:25 <b>created (19)</b> 86:20 91:23 112:14 113:2,13,16 121:15 130:24 160:12 163:10,22 164:11 164:15 180:10 213:25 219:9 220:3 227:13 282:14 <b>creates (2)</b> 189:16 207:5 <b>creating (7)</b> 118:21 180:8 181:3 212:13 229:7 266:12 274:12 <b>creation (14)</b> 4:18 134:8 198:15 201:20,21 216:15 219:23,24 227:9 238:25 239:5 246:14 259:11 295:5 <b>credible (2)</b> 52:6 63:21 <b>credit (16)</b> 8:12 12:18 13:13 183:5 191:22,23	210:25 211:2 270:14 271:13,19 273:7 278:7,9 288:14 290:16 <b>credits (38)</b> 11:8,22 12:6 17:8 27:24 108:21 135:10 169:20 175:2 183:2 191:15 192:8,17,19 193:25 194:14 195:2,3 196:3,7,10 198:6 230:17 260:6 279:2 279:8 284:9,19,24 285:5,21 286:6,19 287:25 288:23 289:9,10 290:3 <b>creep (1)</b> 291:14 <b>criteria (6)</b> 195:18 208:13,15 209:16,19 236:25 <b>critical (3)</b> 21:17 34:11 120:21 <b>critically (1)</b> 13:7 <b>cross (2)</b> 238:6 244:6 <b>cross-examine (5)</b> 29:11 76:16,21 173:20 241:18 <b>cross-section (2)</b> 89:12,17 <b>crosses (1)</b> 267:10 <b>crossroads (1)</b> 268:16 <b>crowding (1)</b> 187:21 <b>CRR (2)</b> 1:22 300:22 <b>crucial (1)</b> 228:22 <b>crucially (1)</b> 231:22 <b>culminates (1)</b> 100:10 <b>Cumberland (1)</b> 261:14 <b>curbing (1)</b> 271:16 <b>cure (2)</b> 144:13,16 <b>curious (1)</b> 114:16 <b>current (8)</b>	13:18 30:11 67:7 128:6 207:4 230:21 231:17 272:6 <b>currently (7)</b> 30:7 33:20 231:4 241:21,24 273:12 285:20 <b>cushion (1)</b> 274:5 <b>customers (5)</b> 181:11,17 202:4 205:6 234:15 <b>cutting (2)</b> 178:22 270:20 <hr/> <b>D</b> <hr/> <b>D (1)</b> 113:10 <b>D-E-G-N-A-N (1)</b> 78:16 <b>damage (1)</b> 22:14 <b>damages (1)</b> 39:5 <b>danger (2)</b> 122:17 287:4 <b>dangerous (3)</b> 288:16,17,19 <b>dangers (1)</b> 286:17 <b>data (67)</b> 7:23 8:3 15:16 49:22 49:22 91:14,24 107:19 113:11 120:16,17,22,24 122:12 129:25 130:5 132:22 134:16 136:19 151:18 156:18 157:21 161:17 163:5 169:18,23 175:8 179:8,11,13 179:21 180:15,23 192:16,21 199:16 200:15 216:12,17 216:23 219:19,22 223:21 224:6 225:5 225:8,24,24 227:8 229:11,13,14,15 232:23 234:20 243:12,12,16,18 250:20 257:19 264:15 266:17,20 295:12,16 296:4 <b>date (12)</b> 11:13 48:14 54:12	59:21 99:5 102:10 106:17,19,20 129:9 158:4 171:4 <b>dates (1)</b> 128:7 <b>dating (1)</b> 244:21 <b>day (7)</b> 10:16 22:6 49:14 76:15 97:9 297:11 300:19 <b>days (4)</b> 11:3 29:5 111:24 167:3 <b>DC (1)</b> 171:19 <b>deadline (1)</b> 154:12 <b>deal (11)</b> 59:22 60:8,14,16,19 61:23 62:24 63:7 64:3 159:24 197:2 <b>dealing (2)</b> 137:7 225:6 <b>deals (4)</b> 159:2,3 245:2 274:15 <b>decade (3)</b> 249:14 256:19 273:24 <b>decade-long (1)</b> 256:20 <b>December (4)</b> 74:2,17 75:2 153:15 <b>decide (6)</b> 8:4 123:21 185:14 191:23 197:24 288:7 <b>decided (3)</b> 75:20 76:18 211:3 <b>deciding (2)</b> 191:14 291:2 <b>decision (12)</b> 22:18 59:21 60:14 61:16 90:8 140:10 203:17 212:22 213:3 226:14 227:18 238:13 <b>decisions (20)</b> 34:10,12 175:23 179:5 203:24 204:13,15,17 208:7 209:12 210:21 211:5,7 212:3 213:8 226:10,16 258:24 281:13 288:22 <b>decline (1)</b> 136:16
---	--	--	--	--

<b>declined (2)</b> 134:24 136:13 <b>declining (1)</b> 136:20 <b>deep (2)</b> 3:25 82:8 <b>deeper (1)</b> 279:17 <b>deeply (1)</b> 18:24 <b>defend (1)</b> 22:15 <b>defendant (1)</b> 107:5 <b>deficiencies (7)</b> 112:11,14 132:9,12 132:20,25 133:22 <b>deficiency (1)</b> 118:19 <b>define (1)</b> 140:20 <b>defined (4)</b> 5:12 137:10 138:25 272:9 <b>defining (1)</b> 180:12 <b>definition (3)</b> 89:10 194:3 220:15 <b>definitions (3)</b> 214:18,22 220:11 <b>defraud (1)</b> 23:16 <b>Degnan (100)</b> 12:25 24:7 77:1,17 78:1,15 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1 98:1 99:1 100:1 101:1 102:1 103:1 104:1 105:1 106:1 107:1 108:1 109:1 110:1 111:1 112:1 113:1 114:1 115:1 116:1 117:1 118:1 119:1 120:1 121:1 122:1 123:1 124:1 125:1 126:1 127:1 128:1 129:1 130:1 131:1 132:1 133:1 134:1 135:1 136:1 137:1 138:1 139:1 140:1 141:1 142:1 143:1 144:1 145:1 146:1 147:1	148:1 149:1 150:1 151:1 152:1 153:1 154:1 155:1 156:1 157:1 158:1 159:1 160:1 161:1 162:1 162:10 163:1 164:1 165:1 166:1 167:1 168:1 169:1 170:1 299:5 <b>degree (7)</b> 30:2 89:14 143:2,3 156:2 211:3 239:9 <b>delegated (1)</b> 17:24 <b>deliberative (1)</b> 158:6 <b>deliver (1)</b> 272:24 <b>demands (1)</b> 14:7 <b>demonstrate (1)</b> 221:14 <b>demonstrates (1)</b> 211:22 <b>dense (1)</b> 79:3 <b>department (12)</b> 6:9 15:24 31:10 73:11 75:22 122:6 156:18 200:20 217:21 225:23,23 280:22 <b>departments (1)</b> 72:18 <b>depend (1)</b> 216:3 <b>depending (2)</b> 189:25 192:6 <b>depends (3)</b> 98:13 155:25 225:18 <b>depositions (5)</b> 109:21 166:12,17,22 167:7 <b>depth (4)</b> 177:16 178:10 179:25 188:16 <b>depths (1)</b> 281:5 <b>deputy (2)</b> 19:19 20:19 <b>describe (16)</b> 16:8 18:16 29:21 35:24 41:6 47:14 82:18 130:16 131:5 174:2 242:25 243:14 244:13 246:5 249:8 261:23	<b>described (4)</b> 109:4 169:16 199:23 230:8 <b>describing (3)</b> 177:25 204:3 247:10 <b>description (1)</b> 117:4 <b>descriptive (1)</b> 226:19 <b>desert (1)</b> 205:16 <b>deserve (2)</b> 7:3 9:3 <b>deserved (1)</b> 11:8 <b>deserves (1)</b> 8:4 <b>design (36)</b> 3:18 25:14 172:9,19 173:4 177:8,10 179:4,11,19 184:11 201:18 204:20 207:11 208:10 210:3 216:3 223:19 226:23 234:21,23 235:11 237:3,16 246:3 254:7 255:8 255:10,20 262:23 263:3 269:5 274:20 277:14 278:20 286:2 <b>designed (9)</b> 4:16 79:25 95:17 97:25 99:13 100:20 138:22 176:12 274:17 <b>designing (3)</b> 218:21 246:18 255:16 <b>designs (2)</b> 178:4 190:21 <b>desirable (2)</b> 194:13 237:4 <b>despite (1)</b> 9:24 <b>destroyed (1)</b> 11:16 <b>detail (3)</b> 120:13 234:3 235:3 <b>detailed (2)</b> 15:8 16:6 <b>details (6)</b> 13:20 104:20 221:2 224:18 228:20 234:24 <b>detection (1)</b> 28:2	<b>determine (10)</b> 85:24 112:21 113:11 134:16 145:15,17 153:17 159:4 207:22 295:3 <b>determined (2)</b> 207:11 208:25 <b>development (31)</b> 1:5 3:7 4:13,18 6:5 25:12 39:7 47:5 58:8 82:9 84:5 107:6 171:21 175:13 180:7,10 185:3,20 188:12 200:19 201:4 202:23 213:7 218:23 221:17,24 245:10 254:19 269:18 293:23 296:7 <b>deviate (1)</b> 123:7 <b>dictate (1)</b> 141:20 <b>died (1)</b> 283:12 <b>difference (7)</b> 82:19 150:22 163:24 178:23 185:25 221:22,25 <b>different (71)</b> 50:20 64:14 81:16 82:10 91:5 116:25 122:20,21 126:22 127:3 141:17 146:18,23 150:25 178:5 179:14,23 180:3,6 181:7 188:4 188:14 191:17 195:5 197:10 200:12 201:12,12 201:18 204:12 209:5,9,25 211:24 214:7 216:24 220:7 220:8,10,11 229:8,9 233:16,20,21,23,24 237:16 238:2,4 243:7,20 246:9 251:8,13 258:25 259:12 260:21 261:5 262:25 266:3 267:8 272:15 276:11 279:20 280:3 284:3 285:6,7 289:4 293:9 <b>differential (1)</b>	251:20 <b>differently (1)</b> 254:17 <b>difficult (4)</b> 137:9 159:17 178:21 197:24 <b>diffuse (1)</b> 291:14 <b>dig (3)</b> 232:6 235:2 239:3 <b>digging (4)</b> 208:5 224:17 228:19 242:23 <b>diligence (2)</b> 210:8,15 <b>direct (4)</b> 17:24 53:19 252:24 297:18 <b>direction (8)</b> 183:11,12 205:21 239:17 254:14,23 255:20 271:12 <b>directions (2)</b> 209:9 233:24 <b>directly (7)</b> 21:8 37:9,21 94:11 110:3 192:5 218:13 <b>director (3)</b> 31:19 32:19,23 <b>directs (1)</b> 84:23 <b>disagree (1)</b> 161:14 <b>disapprove (1)</b> 291:3 <b>discipline (1)</b> 116:25 <b>disclose (1)</b> 17:3 <b>disclosed (5)</b> 104:19 105:11 110:4 153:13 165:19 <b>disconnect (1)</b> 26:2 <b>discount (4)</b> 6:2 183:17,22 184:2 <b>discounts (1)</b> 192:7 <b>discrete (2)</b> 229:9 237:21 <b>discretion (3)</b> 22:25 202:5 209:22 <b>discretionary (5)</b> 208:8,24 209:12 210:21 211:11 <b>discuss (6)</b>
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12:25 114:17 140:14 177:2 179:13,25 <b>discussed (11)</b> 29:7 60:13 81:22 87:12 108:19 111:7 141:22 152:25 223:14 248:25 262:4 <b>discussion (4)</b> 94:3 126:13 131:22 296:15 <b>discussions (2)</b> 116:10 199:11 <b>dispute (1)</b> 157:14 <b>distinct (1)</b> 236:7 <b>distinction (2)</b> 19:24 264:3 <b>distinguish (1)</b> 88:21 <b>distress (1)</b> 238:10 <b>distressed (14)</b> 174:18 205:24 206:4 206:10,12,15 236:3 236:12 238:11 261:7 277:4 291:12 292:3,6 <b>district (3)</b> 20:17 251:12 293:18 <b>districts (1)</b> 80:25 <b>division (7)</b> 80:5,10,20,23 91:15 160:7,13 <b>divisions (2)</b> 80:5 81:21 <b>document (4)</b> 12:9 14:6 16:14 58:18 <b>documentation (1)</b> 113:3 <b>documented (1)</b> 88:14 <b>documenting (1)</b> 100:13 <b>documents (8)</b> 11:17 12:9,13,19 15:10 16:10,19 90:16 <b>dodging (1)</b> 267:6 <b>dog (1)</b> 84:23 <b>doing (27)</b>	8:15 72:21 78:8 93:22 94:10,15 116:9,19 117:2 122:19 162:8 177:22 197:10 198:2 201:4 205:17 212:16 221:9 225:10,11 256:22 258:20 262:18 270:22 293:6 294:7 294:16 <b>doled (4)</b> 245:12 248:18 252:11 278:22 <b>dollar (9)</b> 150:15 183:3,4,6,7,19 184:7 245:2 273:2 <b>dollars (30)</b> 8:11 17:10 44:8,20 45:7 134:11 135:3,9 135:15 165:3,6 189:12,15 232:3 249:18,20,25 250:3 251:2,23,24 252:15 256:18 270:8,9 273:25 274:2,3,14 291:23 <b>door (1)</b> 279:24 <b>dots (1)</b> 267:11 <b>doubt (3)</b> 6:24 140:20 259:17 <b>dovetails (1)</b> 262:11 <b>downturn (2)</b> 7:13 197:20 <b>draft (3)</b> 93:25 94:3,3 <b>drafting (1)</b> 11:4 <b>drafts (1)</b> 100:19 <b>dramatically (3)</b> 4:14 127:3 189:22 <b>drastically (1)</b> 273:10 <b>draw (5)</b> 24:19 28:16 92:19 129:15 295:17 <b>drawing (1)</b> 146:19 <b>drew (2)</b> 111:4 129:22 <b>drill (1)</b> 87:18 <b>due (6)</b>	21:15 170:6,12 210:8 210:15 236:14 <b>dug (1)</b> 295:10 <b>duties (1)</b> 33:7 <b>dynamic (1)</b> 268:7 <hr/> <b>E</b> <hr/> <b>E (3)</b> 1:13,13 113:17 <b>e-mail (1)</b> 64:18 <b>E-R-G (1)</b> 5:3 <b>earlier (17)</b> 95:9 100:17 123:23 141:13 152:17,25 170:18 218:12 223:14 228:19 230:25 231:8 240:19 255:2 264:9 272:9 287:10 <b>early (7)</b> 9:17 11:25 74:2 88:5 168:5 285:2 287:19 <b>earn (3)</b> 202:12,14 232:8 <b>earnings (1)</b> 153:16 <b>easier (3)</b> 49:2 215:24 266:9 <b>easiest (1)</b> 279:3 <b>easy (5)</b> 159:17 161:19,21 165:24 290:7 <b>economic (56)</b> 1:5 3:7 4:13,17,24 6:4 25:11 39:7 40:13 47:4 58:7 82:9 84:5 102:25 107:5,20,23 112:22 132:10 171:21 175:13,19 178:7,14 181:3 185:19,24 188:12 193:14 197:5,20 200:18 201:3 202:9 202:19,23 204:8 213:6 218:23 222:20 223:10 227:6 228:7,21 229:6 234:12 240:21 242:12 244:8 245:10	269:18 272:12,16 278:10 287:2 293:23 <b>economist (2)</b> 259:19 273:21 <b>economists (2)</b> 177:14 203:13 <b>economy (21)</b> 174:10 178:13 181:23 182:10,16,19 186:11,21 193:15 209:7 210:7,14 227:15 258:6,18,23 259:6 265:22 269:8 270:23 289:2 <b>EDA (141)</b> 6:6 7:19 8:10,14,19 8:24 9:21 10:4,11 11:6 12:15 16:23 26:5 27:20,24 28:3 29:11 38:11 40:4,20 42:20,25 43:6,22 44:11,15 45:4,23 48:7 55:20 57:19,23 61:16,24 67:12 68:18,25 69:6,11,22 76:14,18 81:2 83:21 83:23 84:4 88:3,12 89:3 90:7,12 91:21 93:22 95:23 96:2 97:3 98:17 99:8,25 102:5,15 103:8 106:6 107:19,23 108:4,10,12,16,19 108:24 111:8 114:7 115:6,11 116:8 118:13 122:4 125:16 126:12,16 127:20 128:10 134:12 136:12,13 136:17,22 137:10 137:24 138:11 139:18 141:16 143:24 144:12,15 145:17 155:3 158:24 159:7 160:11 161:24 166:20 167:9,10,12 169:19 173:19 199:13,23 221:4 224:5 229:24 230:6 230:8,15,16 233:4 241:6,17 243:4,12 243:18,22 270:10 274:24 275:8,18 276:8 280:9,12,23	283:25 284:2,8 286:4,11,12 289:25 290:4,6 <b>EDA's (26)</b> 9:6,9,11 14:20 15:12 83:25 84:16 85:12 86:5 94:8 99:17 105:11 111:12 112:9 114:18 120:21 127:7 128:6 128:16 132:10,14 137:6 140:15 145:23 147:20 158:2 <b>educate (1)</b> 287:19 <b>educated (1)</b> 284:15 <b>educational (1)</b> 29:23 <b>effect (5)</b> 103:25 104:23 179:16 192:3 295:23 <b>effective (6)</b> 8:21 10:14 192:10 201:10 230:20 245:9 <b>effectively (5)</b> 8:24 10:6 174:23 176:7,18 <b>effectiveness (8)</b> 13:13 112:20 175:22 176:23 177:23 178:8 226:8 234:12 <b>effects (3)</b> 176:24 182:9,10 <b>efficiency (2)</b> 13:12 80:2 <b>efficient (1)</b> 111:18 <b>effort (2)</b> 23:16 278:16 <b>efforts (1)</b> 11:13 <b>eight (7)</b> 12:22 19:7 22:2 172:17 174:3 175:20 235:14 <b>Eighth (1)</b> 175:6 <b>either (17)</b> 23:2 41:9 68:9 70:8 92:21 118:20 120:6 139:25 149:4 178:21 183:10 193:19 197:19
---	--	---	--	--

289:9 <b>elaborate (1)</b> 42:2 <b>elect (1)</b> 139:22 <b>elected (2)</b> 77:12 173:16 <b>election (1)</b> 139:21 <b>element (1)</b> 209:17 <b>elements (2)</b> 255:18,21 <b>elicit (2)</b> 18:17 98:2 <b>eligibility (5)</b> 53:25 159:5,10 236:24 237:6 <b>eligible (5)</b> 6:15 52:17 207:23 236:20 262:19 <b>emerge (1)</b> 9:14 <b>emerged (1)</b> 8:18 <b>emphasize (2)</b> 24:21 170:24 <b>emphasized (1)</b> 211:3 <b>employed (10)</b> 30:7 31:22 42:7 83:10 83:16 107:5 153:19 241:22,24 242:15 <b>employee (10)</b> 36:18 64:14,16 127:21 128:7 137:13,13 153:21 156:19 186:14 <b>employees (17)</b> 15:19 42:7,10 47:3 72:23 73:6,24 74:22 89:25 103:22 104:6 104:7 123:5 153:14 153:17 182:11 217:11 <b>employer (10)</b> 23:20 24:2 28:10,20 36:20 37:2 39:10 75:20 77:11 170:8 <b>employing (1)</b> 83:13 <b>employment (17)</b> 39:12 40:15 42:19 67:6,7 118:16 119:20 127:24,25 134:20,23 136:9,12	136:20 145:3 146:25 169:17 <b>empowered (1)</b> 286:10 <b>enacted (2)</b> 4:12 268:14 <b>encompass (2)</b> 237:8,10 <b>encourage (1)</b> 4:16 <b>encouraging (1)</b> 158:7 <b>ended (3)</b> 46:2 72:15 283:9 <b>energies (1)</b> 15:5 <b>enforce (1)</b> 123:14 <b>enforced (1)</b> 281:25 <b>enforcement (1)</b> 200:5 <b>engage (4)</b> 4:17 101:17 198:19 257:14 <b>engaged (3)</b> 200:19 257:8 295:15 <b>engaging (3)</b> 46:3 116:10 294:17 <b>engineering (1)</b> 30:2 <b>enhance (1)</b> 175:8 <b>enjoy (1)</b> 48:24 <b>enormously (2)</b> 119:7 161:16 <b>ensure (6)</b> 8:23 113:22 115:9 174:22 179:9,21 <b>ensures (1)</b> 189:9 <b>entail (1)</b> 34:8 <b>entails (1)</b> 34:9 <b>enter (2)</b> 13:21 45:3 <b>enterprise (1)</b> 205:10 <b>enterprises (1)</b> 285:13 <b>entire (6)</b> 57:19 127:13 149:19 157:3 251:3 252:8 <b>entities (2)</b>	228:4 286:11 <b>entitled (1)</b> 94:2 <b>entitlements (1)</b> 208:12 <b>entitles (1)</b> 76:14 <b>entity (6)</b> 85:16 103:22 104:5 159:2 160:2 170:12 <b>entry (1)</b> 263:24 <b>environment (1)</b> 268:5 <b>EOA (26)</b> 241:7 247:19 249:24 250:12,16,22,23 251:6,23 254:7,24 255:13 259:10 260:11,15 264:16 264:23 265:4,10 270:5 272:11,23 273:9 284:11 293:2 295:17 <b>EOA's (1)</b> 294:7 <b>EOA13 (18)</b> 244:7 245:7,15 246:3 246:6,8,16,25 247:11 249:5,6 254:15 255:8 256:5 261:22 262:5 263:11 268:14 <b>EOA2013 (2)</b> 254:2 262:23 <b>equal (3)</b> 184:11 186:3 276:3 <b>equally (1)</b> 206:12 <b>equivalent (1)</b> 156:25 <b>ERG (16)</b> 5:3 14:8 86:11 189:7 204:22 205:9 206:8 209:15 221:14,21 246:14 247:16,18 248:2 269:11 284:22 <b>error (1)</b> 294:9 <b>especially (3)</b> 196:8 207:23 239:24 <b>ESQ (5)</b> 1:15,16,17,18,19 <b>essential (1)</b> 253:18	<b>essentially (15)</b> 11:23 59:11 87:17 100:18 101:7 103:8 116:21 117:2 119:3 124:19 208:12 263:10 275:23 280:14 294:24 <b>establish (7)</b> 15:3 119:19 127:23 174:20 175:4 206:23 233:9 <b>established (4)</b> 3:14 20:3 219:20 236:21 <b>establishing (1)</b> 118:15 <b>esteemed (1)</b> 24:6 <b>estimate (2)</b> 256:17 272:11 <b>estimated (1)</b> 134:9 <b>estimates (1)</b> 229:19 <b>estimation (1)</b> 148:13 <b>et (3)</b> 104:15 113:3 187:6 <b>evade (1)</b> 28:2 <b>evaluate (6)</b> 85:23 94:6 177:21 180:21 207:9 226:7 <b>evaluating (5)</b> 176:22 179:15 180:18 211:18 233:10 <b>evaluation (13)</b> 130:21 180:20,24 226:17,18 227:3,16 227:25 229:7,9 279:16,21 280:5 <b>evaluations (8)</b> 175:4 193:18 224:15 226:11 227:10 233:19 235:2,18 <b>eventually (4)</b> 71:21 120:5 283:4 295:25 <b>ever-fluctuating (1)</b> 149:3 <b>everybody (1)</b> 293:25 <b>evidence (5)</b> 22:23,24 65:6 177:11 297:16 <b>evolution (3)</b>	127:19 244:3 249:8 <b>exact (3)</b> 53:3 160:24 220:20 <b>exactly (9)</b> 35:9 44:23 132:20 142:15 147:16 161:12 190:4 203:22 204:2 <b>EXAM (1)</b> 299:3 <b>examination (10)</b> 3:18 26:22 27:20 78:3 83:6 171:15 240:9 240:21 241:7 296:14 <b>examinations (1)</b> 160:14 <b>examine (2)</b> 155:8 234:25 <b>examined (1)</b> 233:20 <b>example (21)</b> 7:4 17:16 82:20 83:2 83:7 109:20 117:23 121:4 123:18 133:21 135:20 146:23 201:17 202:15 204:4 206:2 210:18 214:3 217:7 220:5 222:12 <b>examples (12)</b> 117:25 121:3 129:3 134:4 140:24 143:14 154:10 161:7 260:20 289:6 289:7,14 <b>exceed (1)</b> 134:19 <b>exceptions (1)</b> 205:7 <b>excess (1)</b> 67:3 <b>exchange (1)</b> 95:20 <b>excuse (3)</b> 179:17 181:16 228:7 <b>executive (23)</b> 3:13 9:15 30:10 33:13 80:12,24 84:8 85:9 85:22 86:10,11 107:24 108:4,10,13 108:19,25 140:9 166:22 167:4 183:15 204:6 228:8 <b>executives (8)</b> 31:12 34:11,16 58:5
---	--	--	---	--

74:6 108:16,17 183:19 <b>exemption (2)</b> 5:23,25 <b>exercise (1)</b> 76:19 <b>exercises (1)</b> 202:5 <b>Exhibit (1)</b> 34:22 <b>exist (4)</b> 146:5,5 212:25 249:5 <b>existed (1)</b> 245:7 <b>existence (3)</b> 38:12 124:15 146:20 <b>existential (1)</b> 258:10 <b>existing (8)</b> 4:19,21 58:22,25 67:2 115:25 217:2 243:18 <b>exists (1)</b> 145:22 <b>expand (9)</b> 152:8 181:25 197:18 253:7 255:4 262:7 268:20 272:4 280:11 <b>expanded (1)</b> 253:2 <b>expanse (1)</b> 254:9 <b>expansion (1)</b> 254:10 <b>expect (2)</b> 94:19 110:3 <b>expectation (1)</b> 258:4 <b>expectations (1)</b> 189:23 <b>expected (2)</b> 105:10 197:19 <b>expecting (1)</b> 197:6 <b>experience (12)</b> 4:2 13:15 19:12,13,17 28:11,18 29:19 158:23 159:20 237:14 240:15 <b>expertise (8)</b> 4:8 172:4 211:4,8 212:11,14 228:17 279:17 <b>experts (1)</b> 13:11	<b>expiration (1)</b> 54:9 <b>expired (3)</b> 68:23 232:9 270:6 <b>expires (1)</b> 13:18 <b>explain (12)</b> 3:21 4:11 13:19 79:20 132:17 145:23 173:3 182:25 186:5 264:5 276:10 292:10 <b>explainable (1)</b> 24:22 <b>explained (1)</b> 240:19 <b>explaining (2)</b> 149:7 207:18 <b>explanation (3)</b> 101:23 148:18 169:8 <b>explanations (3)</b> 157:6 165:18 168:2 <b>explore (3)</b> 11:2 167:24 296:21 <b>explosion (3)</b> 244:22 255:23 256:14 <b>exposed (1)</b> 9:4 <b>exposure (1)</b> 229:18 <b>extending (1)</b> 175:17 <b>extensive (1)</b> 158:23 <b>extent (7)</b> 116:20 139:18 185:19 200:18 208:8 284:10 290:14 <b>extra (1)</b> 261:24 <b>extraordinarily (1)</b> 21:6 <b>extreme (1)</b> 208:22 <b>extremely (1)</b> 21:2 <b>eye (1)</b> 170:11 <hr/> <b>F</b> <hr/> <b>F (10)</b> 1:13,22 2:11 112:6 113:20 133:20 134:5 138:4 300:6 300:22 <b>face (6)</b>	15:14 191:25 199:4 273:6 283:7 292:3 <b>facility (2)</b> 99:17 267:12 <b>fact (14)</b> 8:8 17:6 21:21 47:20 65:7 76:24 77:2 84:25 85:20 121:9 131:19 145:11 249:4 292:12 <b>factor (4)</b> 252:24 290:23,25 291:5 <b>factored (1)</b> 91:9 <b>factories (1)</b> 292:7 <b>factors (3)</b> 168:3 272:15 280:3 <b>facts (1)</b> 101:21 <b>fail (1)</b> 16:12 <b>failed (4)</b> 115:12 143:24,25 145:3 <b>failing (1)</b> 232:11 <b>failure (5)</b> 113:10,17 115:24 169:22 277:6 <b>failures (2)</b> 113:6 132:13 <b>fair (42)</b> 31:13 65:3,15 66:4 84:15 85:6 88:10 89:17 95:6 98:9,16 101:6 102:3 103:13 103:15 105:21 115:20 116:3,21 117:3,20,21 119:5 120:15,18 121:12 123:10 126:14 131:5,8 133:14 144:10,20 148:10 152:11,13 235:9 254:5 257:20 258:4 263:8 266:8 <b>fairly (3)</b> 130:5 154:21 198:25 <b>faith (2)</b> 14:13 117:15 <b>fall (4)</b> 48:19 99:17 242:17 289:17 <b>fallen (1)</b>	42:8 <b>false (20)</b> 18:9 39:6 46:20 53:15 56:19 58:6 59:19,20 59:25 60:3 61:17 66:6 67:10,14 68:4 68:24,25 69:11 70:6 71:25 <b>falsify (1)</b> 65:6 <b>familiar (3)</b> 81:7 217:16 246:2 <b>family (1)</b> 5:14 <b>far (9)</b> 17:3,18 93:3 130:25 151:25 183:15 184:2 219:9 297:17 <b>fashion (2)</b> 250:19 286:16 <b>February (7)</b> 12:2 24:13 64:6,8 70:22 75:4 230:18 <b>federal (2)</b> 18:19 19:15 <b>feel (2)</b> 120:3 170:14 <b>feeling (1)</b> 161:11 <b>fees (3)</b> 113:18,22 114:8 <b>feet (1)</b> 155:15 <b>fell (2)</b> 73:12 129:10 <b>fertile (1)</b> 98:5 <b>fewer (1)</b> 182:5 <b>Fifth (1)</b> 174:20 <b>figure (3)</b> 10:21 209:5 270:11 <b>figures (3)</b> 5:15 291:21,25 <b>figuring (1)</b> 180:14 <b>file (7)</b> 6:20 38:4 88:18 101:5 134:15 136:3 208:17 <b>filed (17)</b> 23:17 28:8 35:6,17 36:17 43:9 48:9 79:2 81:24 96:7 97:3 105:2,7 106:5	106:13 166:4 167:21 <b>files (6)</b> 88:6,7,14 122:11,12 122:13 <b>filing (1)</b> 38:11 <b>fill (1)</b> 214:11 <b>filled (1)</b> 186:20 <b>filling (1)</b> 153:14 <b>film (1)</b> 108:20 <b>final (7)</b> 56:22 102:14 115:9 279:9 284:5 295:7 297:7 <b>finally (15)</b> 19:22 25:19 104:17 175:6 179:3 196:4 202:20 207:7 223:4 227:15 228:6,22 233:25 234:5,22 <b>finance (5)</b> 30:10 31:10,11 34:4 78:24 <b>finances (1)</b> 83:14 <b>financial (19)</b> 30:16 32:20,23 33:3 35:10 39:21 45:13 48:21 49:21,22 82:21,22,25 103:25 104:2,23 230:22 232:4 265:5 <b>financially (1)</b> 33:9 <b>financials (3)</b> 33:25 55:10 63:18 <b>financing (2)</b> 221:15 222:4 <b>find (10)</b> 9:20 28:17 93:10 136:16 140:24 154:15 235:17 266:17 290:8 294:13 <b>finding (13)</b> 21:22 118:13,19 120:20 124:20,20 125:4 130:13 140:15 144:11 146:24 152:9 224:4 <b>findings (18)</b>
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13:6,9 79:16 81:3 91:17,18,24 93:17 94:5,12 96:24 114:18 118:11 126:25 142:3 143:11 152:24,25 <b>fine (6)</b> 41:19 42:2 90:5 139:15 156:15 276:19 <b>fine-tune (2)</b> 174:17 205:23 <b>fine-tuned (1)</b> 235:16 <b>finish (1)</b> 66:15 <b>fired (1)</b> 75:5 <b>firm (23)</b> 3:24,25 4:8 20:14 46:3,5,12 51:20 52:5,15 53:17,20,23 54:5 55:3 57:5,18 57:25 64:19 65:24 66:4 78:12 160:16 <b>firms (4)</b> 12:11 181:4 182:14 296:8 <b>first (50)</b> 3:5 9:4,23 10:16 11:8 11:15 17:4 23:13 27:15 29:5 38:19,20 49:11,14 64:11 78:17 79:20 97:18 99:25 102:10 107:2 111:2 114:17 128:9 132:16 135:22 143:18 162:19 172:16 174:5 176:11 177:8 178:6 195:14 201:24 204:22 207:17 211:20 213:9 223:9 227:2 228:13 235:23,24 240:13 250:8 272:4 274:5 277:20 282:23 <b>fiscal (25)</b> 79:25 171:22 174:21 178:15,25 187:8,9 195:7 196:22 206:22,24 207:2 223:15,17 228:2 229:13 234:20 247:2 253:13,16,17 255:22 257:10	277:16 285:17 <b>fit (1)</b> 201:18 <b>fits (1)</b> 291:16 <b>five (15)</b> 82:10 83:24 84:7 86:6 86:24 87:5,9 88:6 89:13,18 99:21 180:22 202:12 231:11 255:25 <b>five-year (2)</b> 256:17 274:10 <b>fix (4)</b> 10:23 142:11 143:8 159:13 <b>fixing (1)</b> 283:13 <b>flag (10)</b> 111:17,19 114:24 118:5 124:5 131:23 132:8 133:19 143:13 153:4 <b>flagship (1)</b> 237:18 <b>flesh (1)</b> 17:16 <b>flexibility (2)</b> 143:4 159:19 <b>floor (2)</b> 172:13 268:24 <b>Florida (13)</b> 56:6,25 62:12,22 63:3 63:12,19 67:3 68:2 68:21 72:19 73:12 75:22 <b>flow (1)</b> 166:3 <b>focus (15)</b> 15:4 24:12 27:21 40:17 71:13 82:5,7 83:8 112:2 114:13 175:20 180:7 192:15 205:5 248:17 <b>focused (3)</b> 145:11 182:7 248:23 <b>focuses (1)</b> 291:10 <b>focusing (5)</b> 51:16 86:18 188:13 223:11 245:6 <b>folks (2)</b> 83:20 116:18 <b>follow (8)</b> 17:15 107:13 115:24	147:12 148:8 164:20 231:23,24 <b>follow-up (10)</b> 75:18 79:17 95:14 118:8 137:22 143:16 157:23 201:8 247:21 257:17 <b>followed (3)</b> 198:10 210:11 213:20 <b>following (7)</b> 65:16,19 103:5 123:16 155:22 214:20 248:11 <b>follows (2)</b> 107:15 213:11 <b>food (1)</b> 205:16 <b>force (23)</b> 1:4 3:7,14,16 14:19 21:18,19 22:3 27:9 34:22 75:15 147:24 147:25 159:12 162:14 170:2,10,18 185:3 186:8 260:3 287:14 298:2 <b>force's (2)</b> 11:13 170:23 <b>forced (1)</b> 178:20 <b>foregoing (1)</b> 300:10 <b>forget (1)</b> 87:14 <b>forgetting (1)</b> 71:25 <b>forgive (1)</b> 110:19 <b>formal (2)</b> 94:20 129:22 <b>former (16)</b> 19:15,16,25 20:12 23:15,20 24:2 28:10 35:7 36:18,20 75:20 77:11 104:6 167:9 170:8 <b>formerly (3)</b> 25:21,21 107:4 <b>forming (1)</b> 175:24 <b>forms (2)</b> 172:15 188:4 <b>formula (5)</b> 265:4,5 272:11,16 283:20 <b>formulas (1)</b>	243:20 <b>forth (3)</b> 46:21 118:14 132:11 <b>forward (11)</b> 21:3 77:8 78:21 131:18 138:23 221:19 222:5 231:4 255:25 274:24 276:4 <b>forward-looking (4)</b> 94:22 138:22 142:14 142:19 <b>found (23)</b> 9:8,21 46:7 64:12 92:15 112:5,8 132:9 132:20 134:22 135:19 136:22 138:18 142:12,13 143:23 144:25 149:9 152:16 154:7 154:9 162:5 168:4 <b>four (6)</b> 5:13 79:9 80:4 81:21 111:24 236:12 <b>fourth (7)</b> 138:13 153:16 156:20 174:16 215:11 235:24 236:2 <b>frame (3)</b> 48:12 96:8 196:17 <b>frames (4)</b> 184:17 196:19 205:3 249:11 <b>fraud (26)</b> 4:9 19:12,17,21 20:9 20:19 28:3 36:9,25 69:6 80:5,7,8,21 103:21,21,24 104:4 104:4,14,15 106:6 167:20,20 266:19 290:18 <b>fraudulent (1)</b> 47:5 <b>freight (2)</b> 267:22 268:21 <b>free (1)</b> 120:3 <b>freedom (1)</b> 161:4 <b>front (9)</b> 96:19 106:12 126:6 172:24 188:8 197:11,14 202:22 279:4 <b>front-loaded (1)</b> 202:10	<b>front-loading (1)</b> 184:12 <b>fruition (2)</b> 133:6 212:17 <b>frustrating (1)</b> 22:8 <b>frustrations (1)</b> 161:9 <b>fulfill (1)</b> 153:20 <b>full (6)</b> 27:13 54:13 122:15 155:8 191:25 231:21 <b>full-time (2)</b> 153:12 156:25 <b>fully (4)</b> 7:11 12:25 19:9 169:22 <b>function (7)</b> 84:24 90:16 159:12 159:25 195:13 208:12 281:10 <b>functioning (1)</b> 18:25 <b>functions (2)</b> 179:15 246:10 <b>fund (2)</b> 201:20 202:22 <b>fundamentally (1)</b> 119:17 <b>funded (2)</b> 188:6 202:20 <b>funding (2)</b> 107:16 184:5 <b>funds (10)</b> 80:3,25 83:14 85:2,3 85:20 142:7,8 270:25 271:3 <b>further (13)</b> 15:17 17:8 26:8 78:23 169:21 174:9 262:4 264:6 265:13 279:15 287:12 297:17 300:13 <b>Furthermore (1)</b> 61:12 <b>furtherers (1)</b> 152:4 <b>future (25)</b> 10:23 13:16 25:17 26:6 28:6 76:21 77:15 171:3 175:9 179:16 180:24 183:16 187:21 189:20 196:11
--	---	--	--	---

207:9 223:16,22 230:5,22 232:14 260:5 269:4 277:21 279:12 <b>fuzziness (1)</b> 237:11	89:7 97:15,25 109:10,17 111:2 116:13 119:8 125:3 137:5 144:10 158:24 160:6 166:3 198:18 221:5 <b>General's (1)</b> 23:3 <b>generalize (1)</b> 201:14 <b>generalized (2)</b> 193:17,20 <b>generally (22)</b> 29:21 30:15 34:3 41:5 113:23 137:11 144:13 161:10 181:8,9 186:2,24 202:3 204:24 205:5 213:4,5 214:9 216:13 217:20 218:23 252:9 <b>generate (1)</b> 65:6 <b>generation (3)</b> 207:4 231:15,17 <b>generations (1)</b> 231:8 <b>generically (2)</b> 86:21 141:23 <b>geographic (3)</b> 237:9 253:24 254:9 <b>geographical (1)</b> 89:15 <b>geographies (1)</b> 260:25 <b>Georgia (7)</b> 1:17 4:5 20:5,6 30:6,6 169:7 <b>getting (23)</b> 8:15 9:2 16:22 68:13 72:13,14 94:20 105:23 114:14 122:9 125:19 131:12 151:20 155:21 200:9 206:10 218:10 219:15 243:22 258:9 281:11 283:2 296:8 <b>Gibbons (1)</b> 78:12 <b>give (20)</b> 6:18 26:18 62:13 70:15 77:20 82:4 88:5 89:7 111:22 119:4 161:3 169:8	169:10 171:12 201:17 240:4 265:24 275:9 297:13,14 <b>given (13)</b> 4:22 34:24 41:9,10 66:7 84:25 85:19 95:22 130:22 161:22 162:14 193:25 300:11 <b>gives (1)</b> 274:4 <b>giving (4)</b> 88:9 97:24 121:3 165:15 <b>glad (1)</b> 21:11 <b>glasses (1)</b> 102:21 <b>Glouster (1)</b> 261:14 <b>go (48)</b> 7:14 15:11 22:9 26:13 31:21 32:21 34:25 41:20 46:18 51:25 52:25 58:15 59:23 63:15 79:9 102:9 103:16 118:5 125:15 130:25 131:22 133:19,20 136:4 137:21 138:12 139:3,13,19 143:12,20 147:4,9 147:21 153:3 158:7 186:8 195:20 221:18 222:5 223:2 241:10 248:9 249:13 256:7,19 268:12,25 <b>goal (9)</b> 78:23 79:5 206:21 236:9 238:7 243:3 265:21,24 292:23 <b>goals (28)</b> 3:22 174:6 179:8,9,20 179:22 180:12 187:9,25 207:8 218:18 223:12 224:8 225:19 226:21 235:25 236:7 237:4 238:15 256:24 262:14,14 265:18,19 269:17 269:18,19 293:21 <b>goes (5)</b> 101:5 126:2 268:11	277:7 285:15 <b>going (109)</b> 6:20 12:21 15:13,22 21:13 23:8 24:5,7,9 34:21 38:15 50:14 51:25 52:21,23 56:18 59:10 63:8 64:9 66:17 69:25 77:13 79:10 88:23 94:23 98:14 101:19 106:13,15 107:3,11 109:21 110:21,24 111:25 114:2 116:25 120:6,12 121:6 122:18 125:15 130:3 131:18 132:4 133:6 133:13 136:24 138:23 143:7 147:21 148:5 149:13,23 153:6 165:14,25 166:16 167:23 168:7 169:9 171:11 176:9 177:2 180:11,21 182:4,11 186:7 187:7 189:14 189:22 191:9 198:2 205:20 206:3 212:10,17 216:5,16 218:13 219:22 223:4 228:14 231:4 232:15 233:24 237:25 239:18 240:4 242:10 243:23 244:7 245:3 248:14 251:18 255:3 266:24 274:18 276:2,16,20 279:5 285:10,11,14 292:24 294:13 295:25 <b>good (28)</b> 3:2 14:13 26:24 78:5 78:6 80:2,15 84:25 93:15 97:18 117:15 122:12 141:20 142:4 169:4 184:15 192:16,17 209:6,11 210:13 225:5 240:11,12 259:19 262:12 286:12 292:7 <b>Goodman (85)</b> 25:5 171:1,7,8,18,20 172:1,7,14,16,21 173:1,2,13,24 174:1	175:1,11 176:1 177:1 178:1 179:1 180:1 181:1 182:1 183:1 184:1,16 185:1 186:1 187:1 188:1 189:1 190:1 191:1 192:1 193:1 194:1 195:1 196:1 197:1 198:1 199:1 200:1 201:1 202:1 203:1 204:1 205:1 206:1 207:1 208:1 209:1 210:1 211:1 212:1 213:1 214:1 215:1 216:1 217:1 218:1 219:1 220:1 221:1 222:1 223:1 224:1 225:1 226:1 227:1 228:1 229:1 230:1 231:1 232:1 233:1 234:1 235:1 236:1 237:1 238:1 239:1 291:10 299:6 <b>goods (1)</b> 174:11 <b>gotten (2)</b> 12:23 280:6 <b>governing (1)</b> 220:10 <b>government (19)</b> 7:16 19:2,18 31:20 36:9,11 80:2 81:12 84:9,25 139:17 141:20 142:4 158:24 159:23 184:3,7,9 185:11 <b>governmental (1)</b> 159:25 <b>governments (3)</b> 184:22 239:15 268:8 <b>governor (5)</b> 3:12 9:15 17:22 85:23 158:17 <b>graduating (1)</b> 34:5 <b>grant (21)</b> 42:4,12,16 43:24 44:4 44:6,22 45:15 46:23 47:6 58:9 59:13 61:19 65:9 71:15 72:15 124:16 153:11,20 211:19 262:7 <b>granted (5)</b> 17:22 40:25 59:3 71:22,24
--	--	---	---	---

<b>grants (3)</b> 14:9 194:19,25	236:7,11 238:23 252:2 261:17	277:6 282:9	<b>helpful (11)</b> 24:10,14 28:4 185:15	153:18,19
<b>granular (1)</b> 12:16	265:23 269:10,13 287:2 291:12	<b>happy (3)</b> 140:12 162:16 235:7	189:24 190:8	<b>hiring (1)</b> 128:7
<b>graph (1)</b> 250:18	292:14,16	<b>Haran (1)</b> 3:25	195:11 196:20	<b>historically (2)</b> 244:4 248:19
<b>grateful (1)</b> 172:2	<b>guess (7)</b> 34:22 93:5 125:25 137:17 138:13 261:10 292:9	<b>hard (3)</b> 152:23 255:16 291:5	201:16 280:10 296:4	<b>history (3)</b> 226:20 271:2 290:18
<b>great (7)</b> 19:6 120:2 125:13 200:2 244:23 277:11 290:13	<b>guidance (2)</b> 123:5 165:8	<b>head (8)</b> 33:15 37:18 43:17 57:11 64:17 65:20 158:4 248:8	<b>helpfully (1)</b> 124:4	<b>hit (3)</b> 196:2 223:6 233:4
<b>greater (3)</b> 202:8,15 265:15	<b>guide (1)</b> 38:16	<b>headcount (3)</b> 215:16,17,23	<b>helping (2)</b> 175:21,23	<b>hockey (1)</b> 250:18
<b>greatly (1)</b> 16:21	<b>guidelines (1)</b> 213:11	<b>header (1)</b> 115:4	<b>helps (1)</b> 219:10	<b>hold (3)</b> 7:17 16:18 196:10
<b>grocery (1)</b> 205:15	<b>guiding (2)</b> 177:3 178:5	<b>headquarters (5)</b> 68:20 71:4 72:16 265:25 266:2	<b>hereunto (1)</b> 300:19	<b>holding (2)</b> 21:15 268:9
<b>ground (4)</b> 98:5 155:15 258:21 294:25	<b>Gulsen (5)</b> 23:14 26:9 27:14 39:3 39:8	<b>health (1)</b> 171:22	<b>hesitate (2)</b> 142:23 157:4	<b>hole (1)</b> 273:14
<b>groundwork (1)</b> 273:16	<b>guy (1)</b> 106:3	<b>healthcare (2)</b> 33:22 184:6	<b>hey (1)</b> 266:14	<b>holes (1)</b> 9:13
<b>group (2)</b> 192:4 234:9	<b>guys (1)</b> 266:16	<b>hear (10)</b> 10:17 23:13 24:5 25:5 25:19,24 169:14 171:3,6 282:16	<b>hide (1)</b> 18:6	<b>home (1)</b> 288:10
<b>groups (1)</b> 296:2	<hr/> <b>H</b> <hr/>	<b>heard (9)</b> 27:18 60:17 165:20 228:19 240:22 247:8 264:8 291:9 294:20	<b>high (10)</b> 119:12,13 181:4 182:14 186:5,7 201:25 210:5 226:17 232:18	<b>honest (1)</b> 6:21
<b>grow (69)</b> 4:23 9:10 14:8 40:9 43:10 45:17,25 46:18,22 47:7 48:7 49:19 50:3 51:18 52:12,18,22 53:9,12 54:21 55:3,16 56:8 57:22 58:9,19 59:2 60:21 61:19 63:22 69:25 70:7 71:14,22 72:6,12,14 73:2,16 73:19 74:10,19 75:10 86:10 119:11 127:22 128:21 145:2 163:15,18 174:10 189:22 201:22 209:14 210:7 231:2 236:6 236:25 246:12 247:3,14 254:9 265:21 270:5,22 284:21 285:5 286:25 288:25	<b>half (4)</b> 32:7 164:3,3 270:8	<b>hearing (8)</b> 1:9 2:9 3:6 22:6 24:13 95:3 109:13 281:15	<b>high-profile (2)</b> 244:25 264:22	<b>honestly (2)</b> 6:14 82:23
<b>growing (3)</b> 121:6 177:11 258:18	<b>hallway (1)</b> 26:12	<b>hearings (3)</b> 21:14 22:22 76:16	<b>higher (4)</b> 164:12 181:3 251:14 263:24	<b>honored (1)</b> 3:15
<b>grown (1)</b> 191:7	<b>hand (4)</b> 26:16 34:21 292:4 300:19	<b>heart (1)</b> 144:8	<b>highlight (4)</b> 24:15 115:22 134:4 153:25	<b>hope (8)</b> 11:18 13:15,25 17:14 24:10,14 162:2 171:2
<b>growth (16)</b> 4:25 5:11,12 186:23	<b>handed (1)</b> 280:19	<b>heavily (2)</b> 245:17 295:15	<b>highlighted (18)</b> 34:24 38:19 59:17 61:8 102:20 103:18 106:19 111:20 115:3 118:6 124:6 124:13 127:9 131:25 133:20 143:18 153:5 154:24	<b>hopefully (4)</b> 11:18 124:4 163:3 165:24
	<b>hands (1)</b> 143:5	<b>heavy (1)</b> 183:16	<b>highlights (1)</b> 169:21	<b>hoping (1)</b> 95:19
	<b>happen (7)</b> 196:15 215:13 263:3 274:19,22 275:21 283:17	<b>held (7)</b> 2:9 3:6 33:2,17 34:15 74:6 278:21	<b>highly (2)</b> 208:24 257:14	<b>hotel (3)</b> 181:20,25 182:4
	<b>happened (10)</b> 10:21 43:21 44:10 89:19 154:25 167:3 243:9 245:14 274:15 282:15	<b>help (26)</b> 5:5 10:20 18:24 21:10 28:3 47:20 79:14 83:20 97:12 100:9 117:9 119:16 121:25 149:25 162:16 170:19 176:5 181:25 185:8 197:7 235:2 252:13 267:7 275:19 285:5 287:18	<b>Hills (1)</b> 236:20	<b>hotels (1)</b> 205:8
	<b>happening (6)</b> 14:22 93:20 123:3 157:10 224:9 264:23		<b>Hindsight (1)</b> 245:13	<b>housing (1)</b> 194:9
	<b>happens (5)</b> 89:23 178:20 247:20		<b>hire (1)</b> 154:11	<b>HR (2)</b> 73:11 74:9
			<b>hired (6)</b> 12:7 51:19 215:9,10 267:4 296:8	<b>hubs (1)</b> 261:7
			<b>hires (2)</b>	<b>HUD (2)</b> 134:6,18
				<b>huge (1)</b> 251:19
				<b>human (2)</b> 72:17 75:21
				<b>hundreds (1)</b> 274:14
				<b>hurdles (1)</b> 170:14

<b>hybrid (2)</b> 198:8,10	213:18,19 220:23 235:11 237:12 240:25 260:10	193:15	226:23	<b>including (17)</b> 11:4 12:14 15:23 18:5 20:9 25:10 26:2 66:9 98:18 167:7 172:19 179:15 221:3 231:21 279:21 287:9,10
<b>hypothetical (1)</b> 136:22	<b>implemented (9)</b> 124:14 176:16 203:15 247:11 250:13,16 259:11 260:15 268:15	<b>in-depth (6)</b> 3:18 27:19 160:13 240:20 241:7 296:13	<b>incentivees (1)</b> 176:7	<b>income (3)</b> 5:15 186:11,16
<b>I</b>		<b>in-house (2)</b> 152:3 160:12	<b>incentives (122)</b> 1:6 3:8 8:12 9:3 13:24 25:10 44:18 52:21 85:13 107:16 119:4 172:20 173:6 174:7 174:9,15,18,21 175:9,14,19,22,24 176:3,4 177:18,21 177:24 178:8,11 180:18 181:10,16 181:24 182:7,23 184:17,18 186:3 188:6,18,18 189:15 190:13 195:8,11 196:14,23 197:6,11 197:14 198:4,13,23 201:22 202:12,14 202:19,25 203:19 204:21,23 205:2,4 205:13,15 206:3,7 206:11,13,20,25 207:4,16 208:2,8 209:3 210:10,22 211:19 212:5,7,9 213:15 219:7 220:23 221:3,18 222:11,14 223:5,18 226:8 230:6 231:2,7 233:2,5,10,19 236:2 236:3 242:10 243:24 244:18 245:4,18 246:18 249:12 253:5 257:23 258:7,11 261:4 264:12,18 268:5 281:18 286:22 289:22 291:16 293:13	<b>incomplete (1)</b> 122:11
<b>i.e (2)</b> 113:2 118:17	<b>implements (1)</b> 225:8	<b>in-state (2)</b> 55:8,11		<b>inconsistently (1)</b> 122:19
<b>ice (1)</b> 273:19	<b>implicated (1)</b> 85:21	<b>inability (1)</b> 292:22		<b>incorporate (1)</b> 148:2
<b>idea (6)</b> 56:17 80:15,15 178:10 253:17 256:8	<b>implications (1)</b> 239:14	<b>inaccurate (1)</b> 113:7		<b>incorporated (2)</b> 88:8 285:25
<b>ideal (1)</b> 284:17	<b>importance (5)</b> 13:9 21:17 117:12 169:25 170:25	<b>inadequate (2)</b> 112:11 113:20		<b>increase (3)</b> 252:10,22 258:7
<b>ideally (1)</b> 217:17	<b>important (42)</b> 6:8 13:6,7 15:16 21:2 21:6 22:12 24:23 85:10,15 97:14 100:10 101:17 110:23 116:14 118:3 119:18 121:14 130:19 145:12 150:4 162:22 165:10 177:9 178:16 179:3 179:10 180:8 182:22 188:23 195:8 200:3 214:16 215:4 219:20 226:16 228:16 229:12 231:22 238:3 262:8 296:4	<b>inadvertent (1)</b> 157:19		<b>increased (6)</b> 4:15 178:19 245:23 247:19 249:25 264:20
<b>ideas (10)</b> 142:4 172:18 176:2 180:4 181:7 210:3 235:14 237:18 238:2 268:24		<b>incent (1)</b> 135:17		<b>increases (1)</b> 247:24
<b>identification (1)</b> 140:22		<b>incented (1)</b> 113:12		<b>increasing (3)</b> 221:23 245:5 264:11
<b>identified (6)</b> 9:23 93:13 131:23 264:21 269:11 279:11		<b>incentive (95)</b> 3:20 4:15 5:21 6:10 8:13 10:23 13:17 18:8 23:16 25:15,25 27:20 28:6 40:13,16 41:8 46:2 48:6 52:12 53:6,12 54:14 59:3 83:24 84:2,7 84:17 86:5,17 89:18 100:4 105:4 112:10 112:16,20 114:20 115:11,17 117:14 133:7 134:10 135:2 140:17 141:17 142:17 171:25 172:6,10 175:5 176:10 177:10,12 178:18 179:19,22 184:10 185:10 187:14 189:3 190:23 197:2 199:2 200:13 201:19 208:15,21 218:4 220:8 221:22 224:15,18,22 226:20 234:23 235:12 239:2 240:17 242:4,7,22 244:20 246:11 249:2,18 256:22,25 261:3 271:19 272:13,19,24 279:23 284:21 286:24 297:15		<b>incredibly (1)</b> 280:10
<b>identifiers (1)</b> 157:13	<b>importantly (1)</b> 10:22			<b>incremental (2)</b> 225:7 247:24
<b>identify (10)</b> 24:15 120:8,11 123:17,18 126:9 138:8,23 157:12 243:8	<b>impression (1)</b> 97:25			<b>incumbent (2)</b> 120:15 123:13
<b>illustrated (1)</b> 234:23	<b>improper (10)</b> 108:3 117:19 138:18 139:25 140:3 145:20 146:15 150:11 152:20 157:5			<b>independence (1)</b> 161:2
<b>imagine (3)</b> 6:7 203:11 215:12	<b>improve (12)</b> 18:25 25:16 26:7 28:4 172:11 175:21 204:20 233:8 234:8 234:11 235:10 269:8			<b>independent (10)</b> 79:25 82:8 83:6 84:8 160:15 175:4 199:19 200:23 203:12 280:8
<b>impact (23)</b> 62:11,21,25 63:11 98:9 151:2 181:3,4 193:14 201:25 202:9 205:2 210:5 210:17 223:10 227:6,13 228:22 229:6 241:2 253:14 268:19 297:18	<b>improvement (1)</b> 268:22			<b>independently (1)</b> 225:4
<b>impacts (1)</b> 142:7	<b>improvements (3)</b> 235:5 258:5 268:25			<b>INDEX (1)</b> 299:2
<b>implement (1)</b> 123:21	<b>improving (1)</b>	<b>incentive's (1)</b>	<b>incentivize (3)</b> 192:13 262:15 291:12	<b>indirect (1)</b> 182:9
<b>implementation (13)</b> 3:19 25:14 172:9,19 173:5 207:11			<b>inclination (1)</b> 286:7	<b>individual (7)</b> 28:23 77:5 102:4 157:6,13 170:12 247:4
			<b>include (8)</b> 8:23 94:7 112:11 226:13 230:20 235:14 269:6 284:22	<b>individual's (1)</b> 37:17
			<b>included (7)</b> 52:7 55:7,15 63:22 64:16 86:13 236:16	<b>individuals (5)</b> 21:16 22:10 23:6 153:23 166:19
			<b>includes (4)</b> 176:22,23 212:3 226:22	<b>induced (1)</b>

182:9	242:13 244:17	<b>interactive (1)</b>	239:16,19 288:11	195:1 196:1 197:1
<b>industrial (1)</b>	<b>initiate (2)</b>	180:16	292:5,20	198:1 199:1 200:1
30:2	85:25 137:14	<b>interactively (1)</b>	<b>investments (7)</b>	201:1 202:1 203:1
<b>industries (3)</b>	<b>initiated (2)</b>	278:14	5:9 130:24 174:25	204:1 205:1 206:1
202:2 262:5 265:23	86:2 137:24	<b>interest (7)</b>	195:23 197:5	207:1 208:1 209:1
<b>industry (3)</b>	<b>injected (1)</b>	84:24 177:15 215:14	257:12 259:12	210:1 211:1 212:1
246:21 262:17 290:19	161:2	242:3,12,13 295:15	<b>invitation (1)</b>	213:1 214:1 215:1
<b>industry-specific (1)</b>	<b>innocent (2)</b>	<b>interested (3)</b>	175:17	216:1 217:1 218:1
254:3	101:23 167:25	99:16,20 300:16	<b>invite (1)</b>	219:1 220:1 221:1
<b>inefficiencies (1)</b>	<b>input (2)</b>	<b>interesting (3)</b>	297:8	222:1 223:1 224:1
112:9	90:8,11	161:8 190:12 245:13	<b>involve (1)</b>	225:1 226:1 227:1
<b>inevitable (1)</b>	<b>inputs (2)</b>	<b>Interestingly (1)</b>	189:4	228:1 229:1 230:1
178:25	107:25 134:16	89:22	<b>involved (9)</b>	231:1 232:1 233:1
<b>inevitably (2)</b>	<b>inquiry (2)</b>	<b>interests (2)</b>	18:24 23:10,15 40:5,8	234:1 235:1 236:1
163:21 164:13	16:20 295:10	245:19 295:4	45:11 150:20	237:1 238:1 239:1
<b>inferences (1)</b>	<b>inserting (1)</b>	<b>internal (6)</b>	209:17 211:9	240:1 241:1 242:1
28:16	283:13	18:22 20:8 92:18 93:9	<b>involvement (1)</b>	243:1 244:1 245:1
<b>influencing (1)</b>	<b>insist (1)</b>	103:23 114:19	53:25	246:1 247:1 248:1
213:2	140:7	<b>international (1)</b>	<b>involves (1)</b>	249:1 250:1 251:1
<b>inform (3)</b>	<b>inspectors (1)</b>	30:23	294:17	252:1 253:1 254:1
97:20 219:10 297:17	160:5	<b>internationally (2)</b>	<b>involving (1)</b>	255:1 256:1 257:1
<b>information (95)</b>	<b>instance (2)</b>	174:12 181:13	103:22	258:1 259:1 260:1
6:18 7:24 10:10,12	123:19 291:21	<b>intersection (1)</b>	<b>irrespective (2)</b>	261:1 262:1 263:1
15:18,25 18:10	<b>instances (4)</b>	280:20	76:23 77:2	264:1 265:1 266:1
21:12 22:12,20	123:6 143:23 198:24	<b>interview (3)</b>	<b>IRS (2)</b>	267:1 268:1 269:1
24:16 34:13 39:6	232:7	15:19,20 64:11	6:22 283:15	270:1 271:1 272:1
43:15 47:6,17 61:21	<b>institute (1)</b>	<b>interviewed (3)</b>	<b>issuance (1)</b>	273:1 274:1 275:1
61:22 66:5,8 68:5	276:22	48:20 51:6 139:7	297:6	276:1 277:1 278:1
69:12,15,16,19	<b>institutions (2)</b>	<b>interviewing (2)</b>	<b>issue (14)</b>	279:1 280:1 281:1
78:19 79:6 91:19	211:6 228:5	12:14 48:18	14:5 16:16 17:25	282:1 283:1 284:1
92:2 95:12,13,14,20	<b>instructed (1)</b>	<b>introduce (4)</b>	24:23 85:2,19 98:3	285:1 286:1 287:1
96:16 97:17,20 98:2	71:13	3:22 19:9 78:9 118:4	100:5 111:9 123:25	288:1 289:1 290:1
98:11 99:2 100:6,8	<b>insufficient (4)</b>	<b>introduced (2)</b>	161:8 170:2,7,18	291:1 292:1 293:1
105:23 109:6	10:7,8 112:12 113:3	232:17 283:10	<b>issued (5)</b>	294:1 295:1 296:1
116:12 124:7	<b>insurance (3)</b>	<b>introduction (2)</b>	3:13 198:6 247:13	297:1 298:1 299:1,6
127:21 128:5,13	32:16 217:8,12	18:15 102:18	256:4 278:16	299:7 300:1
129:13 131:14	<b>intend (1)</b>	<b>introductory (1)</b>	<b>issues (10)</b>	<b>January (20)</b>
134:14 135:6,21,25	24:15	38:19	15:9 19:3 25:9 126:25	3:12 9:6 79:2 81:25
136:3 145:18 146:7	<b>intended (8)</b>	<b>intuitive (1)</b>	160:24 162:4	82:2 91:3 97:4
146:8 147:4,10	7:11 9:12 14:19 61:13	239:7	170:10,20 196:3	102:12 103:2,3,3
151:6,21,24 155:9	95:17 161:20	<b>investigate (3)</b>	281:6	105:8,8 126:11
162:21 165:15	223:19 288:15	18:7 20:3 22:17	<b>issuing (2)</b>	166:8,15,16 167:16
170:22 171:2	<b>intent (2)</b>	<b>investigates (1)</b>	27:9 174:25	167:21,22
185:13,21 217:20	101:11 288:25	80:8	<b>Istanbul (1)</b>	<b>Jersey (199)</b>
217:22 218:8,10,25	<b>intention (1)</b>	<b>investigating (2)</b>	30:3	1:4 2:10,13 3:6 4:13
219:10 225:22	67:15	19:13 170:10		4:20,24 5:7,8,10,13
226:12,19 227:16	<b>intentionally (1)</b>	<b>investigation (6)</b>	<b>J</b>	8:9 9:10 17:23 24:7
227:21 229:23	157:21	14:5 17:2,17 21:24	<b>J (132)</b>	25:16,21,22 28:9
230:7 231:20 241:5	<b>interact (1)</b>	105:20 168:5	171:1 172:1 173:1	31:23 32:3 39:4,7
243:4 251:10 272:5	121:24	<b>investigations (10)</b>	174:1 175:1 176:1	40:9 42:8 43:10
281:3 283:2,6,24	<b>interacting (2)</b>	4:3,9 14:24 18:23	177:1 178:1 179:1	45:17,25 46:19,22
286:14 290:11	49:25 50:4	19:22 20:9,10 21:7	180:1 181:1 182:1	47:4,7,24 48:2,7
297:5	<b>interaction (1)</b>	80:19,21	183:1 184:1 185:1	49:4,9,19 50:3,12
<b>initial (7)</b>	65:24	<b>investment (12)</b>	186:1 187:1 188:1	50:15 51:13,18
21:14 26:3 131:14	<b>interactions (1)</b>	198:15 221:24 236:10	189:1 190:1 191:1	52:12,18,22 53:9,11
180:13 195:14	62:3	238:20,25 239:5,11	192:1 193:1 194:1	53:13 54:9,22 55:4

55:16 56:8,10,24 57:23 58:7,9,19,23 59:2,22 60:3,15,18 60:21 61:13,15,16 61:19,23 62:6 63:2 63:9,10,22 64:3,10 64:17,19 65:8,10 66:12 67:7,16 68:18 69:25 70:7 71:5,14 71:22 72:6,13,14,16 72:20,23,24 73:2,7 73:16,19,24 74:10 74:19 75:10,25 78:12 84:4 86:11 90:19 97:2 102:25 107:5,18,22,23 108:9,24 119:12 127:22 128:21 145:2 163:15,18 172:11,18 174:13 174:20 175:3,6,15 177:6 179:18 180:2 181:22 182:21 189:5 198:9 203:5 205:4,25 206:23 220:23 221:2 222:8 224:12 229:22 230:23,24 233:16 233:19 234:6 235:10,17 236:6,25 239:25 241:9 242:4 242:9,10,15,17,20 244:5,19,20 246:13 246:17 247:3,15 248:21 249:13,19 251:11 257:4 258:12 259:6,10,13 259:25 261:12 262:2,10 263:10 266:25 269:3,13,14 269:14 271:2,24 274:13 275:4 279:20 284:22 287:23	121:6,14,15 122:5 123:8 125:7 145:13 145:16,18,22 146:13,15 150:2,19 150:21 151:2 156:17,22,23,24 157:6 164:2,4 165:3 169:23 201:20,21 215:18 216:15 217:13 219:22,24 220:12 227:8 236:7 238:22,24 239:5 245:23 246:13 249:20 250:2,3,7,25 251:17,19,21,24 252:6,15 259:11 263:24 264:3,4 265:5,6 291:23 292:14,16	<b>Josh (5)</b> 25:5,11 171:7 262:12 265:19 <b>Josh's (1)</b> 256:16 <b>journalist (1)</b> 242:8 <b>judgment (4)</b> 93:15 154:25 209:18 209:23 <b>judgmental (1)</b> 89:11 <b>July (1)</b> 9:7 <b>jump (1)</b> 223:24 <b>June (1)</b> 297:3 <b>Justice (1)</b> 20:20 <b>justified (1)</b> 271:11 <b>justifying (1)</b> 182:7	49:20 52:11 58:20 118:2 176:10 187:9 206:18 207:16 208:7 209:10 217:7 218:18 226:13 227:18 233:8 253:11 280:25,25 <b>kickoff (1)</b> 167:2 <b>kids (1)</b> 119:22 <b>kind (64)</b> 45:3 51:15 53:24 82:20 97:12 98:10 111:21 114:21 116:22 126:18 137:21 144:8 154:18 161:23 162:22 164:17 170:25 178:24 179:2 185:20 187:18 188:2 198:8 199:20,24 208:9 210:8,15 214:3 216:13,22 217:22 224:20 226:22 227:5,9 244:10 245:3 247:4 248:17 255:24 257:15 258:18 259:20 263:22 264:14 266:23 268:11,15 268:17,20 270:14 272:18 276:14,25 277:23 281:6,8 283:9 291:5 295:22 295:23,25 296:3 <b>kinds (10)</b> 190:21 191:10 200:24 205:13 208:16 217:15 229:14 233:13 289:15 295:14 <b>knew (7)</b> 12:3,8 50:13 51:2 59:24 66:5 109:20 <b>know (151)</b> 6:21 10:3 16:17 18:19 24:24 28:17 34:25 38:10,13 40:10,22 43:21 44:23 48:25 51:2 53:3 57:2,21 60:14 61:22 64:7 74:14 75:19,20 81:18 84:12 85:8,20 87:2,3,3,8 89:3 90:4	90:6 91:8 97:15 98:21,24 99:4,8,23 99:24 105:11 106:8 106:10 108:13 109:2,7,11,14,15,16 109:18 110:6,11 114:14 116:15 121:8 122:8,25 124:23 125:9 128:10 129:2,4,21 137:19,20,23 138:5 138:20,20 139:5,6 140:8,13 148:3 149:7,16 151:17,17 151:19 155:4,14 156:13 157:12,14 159:15,15,21 160:10,23 162:8 163:8,13,14 166:9 168:6 171:18 185:16 189:13,21 192:11 194:12 203:7,8,22 212:5,21 214:20 220:3 223:21 224:3 225:13 232:6 234:18 243:22 246:13 247:5 248:8 251:13 252:23 253:10,20 255:2,15 257:6 258:6 261:23 263:19 270:5 272:16 275:8 276:21 278:15 279:22 280:6,21 283:7 286:23 287:11 289:11,19 290:10,18,24 291:9 291:19 292:4 295:12 <b>know-how (1)</b> 185:6 <b>knowing (2)</b> 69:5 121:25 <b>knowingly (2)</b> 47:3 58:6 <b>knowledge (26)</b> 35:24 41:6 42:14,23 42:24 43:6 44:11 45:3 53:8 55:19 56:16 57:24 61:20 61:21,25 62:2 63:10 65:23 66:2 68:5 69:4 103:4,20 104:9 104:13 289:25 <b>known (2)</b>
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5:10 59:20 <b>knows (2)</b> 147:16 192:20	106:5 <b>lawyer (1)</b> 20:13 <b>lawyers (2)</b> 12:6 15:21 <b>lay (1)</b> 273:15 <b>layer (2)</b> 261:8,15 <b>layman's (3)</b> 84:15 117:3 130:17 <b>layperson (1)</b> 79:7 <b>layperson's (1)</b> 35:24 <b>lays (2)</b> 176:13 226:19 <b>lead (6)</b> 3:16 98:3 133:7 204:14 237:11 291:17 <b>lead-in (1)</b> 112:7 <b>leader (1)</b> 211:6 <b>leadership (1)</b> 19:5 <b>leading (3)</b> 4:4 152:12 177:13 <b>leads (1)</b> 98:5 <b>learn (13)</b> 6:25 42:25 43:6,15 45:21 48:4,5,16 51:23 73:21 101:24 240:15 251:6 <b>learned (7)</b> 43:22 44:11,15 46:4 46:11 63:25 251:11 <b>lease (1)</b> 61:14 <b>leave (9)</b> 54:11 56:9 59:13 65:8 127:14 143:4 266:24 267:18,25 <b>leaves (1)</b> 215:8 <b>leaving (6)</b> 47:23 48:2 67:15 246:11 264:10 266:15 <b>led (1)</b> 247:7 <b>left (9)</b> 4:4 20:12,15 31:14,18 49:14 89:24 268:2	289:10 <b>legal (3)</b> 106:23 267:11,11 <b>legislation (42)</b> 4:23 5:13,24 8:22 13:17,18 25:18 26:3 26:6 142:19,21,22 159:14 236:15 240:24 241:8 243:10 244:2,9 245:7,9 246:7 247:21 252:24 254:22 255:16,23 261:20 268:19 269:5 272:21 275:9 277:22 279:13 280:18 281:2 283:10,14,19 285:7 286:9 294:10 <b>legislative (25)</b> 24:12 28:5 143:7 202:21 204:7 227:24,24,25 228:2 229:25 230:4 246:3 248:2 254:7 255:8 255:10 269:5 278:20 281:15 282:19 286:2 288:24 294:16,17 295:6 <b>legislator (2)</b> 267:24 270:18 <b>legislators (3)</b> 145:10 253:22 281:4 <b>legislature (7)</b> 4:12 10:22 145:9 179:21 188:7 286:9 293:17 <b>legitimate (3)</b> 108:8 167:25 267:17 <b>length (1)</b> 12:24 <b>lense (1)</b> 292:14 <b>lessons (2)</b> 177:2,6 <b>let's (18)</b> 40:17 46:18 130:10 135:24 143:10 155:18,18 163:12 163:16 164:5,14 175:12 223:2 257:17 262:17 276:13 288:6 295:3 <b>letter (16)</b> 97:7 100:16 101:7,11	101:20 102:11,13 102:15,18,19 105:7 105:13 111:9 126:6 126:12 167:17 <b>letterhead (2)</b> 101:2 102:16 <b>letters (6)</b> 11:20,22,25 12:10 128:16 145:5 <b>level (18)</b> 12:16 27:21 31:11 34:16 89:20 119:12 119:13 134:20 136:10,20 148:22 154:22 191:20 215:20 223:11 241:5 257:18 266:22 <b>levels (5)</b> 136:9 145:4 146:25 198:15 267:7 <b>liabilities (1)</b> 5:20 <b>liability (6)</b> 190:14,23 191:2,6 194:22 232:12 <b>lied (1)</b> 47:21 <b>lies (1)</b> 81:22 <b>life (6)</b> 19:20 131:10 210:23 211:10,15 270:4 <b>lifespan (1)</b> 270:9 <b>lifetime (1)</b> 252:17 <b>light (2)</b> 109:5 243:6 <b>limit (5)</b> 187:18 188:2,11 189:16 191:5 <b>limited (6)</b> 125:5 129:4,5 190:13 202:23 284:11 <b>limiting (1)</b> 190:22 <b>limits (2)</b> 123:6 207:3 <b>line (5)</b> 129:25 183:21 282:24 286:23 295:9 <b>lines (1)</b> 148:24 <b>lineup (2)</b> 20:24 23:12	<b>linked (1)</b> 196:23 <b>list (5)</b> 118:10 143:14 153:21 180:12 198:24 <b>listen (1)</b> 215:15 <b>listened (1)</b> 145:8 <b>literature (6)</b> 181:8 183:13,25 186:2,19 204:24 <b>litigate (1)</b> 90:18 <b>litigation (15)</b> 18:24 23:19 96:7,15 98:7,20 99:10,21 100:3 104:21 109:25 142:14 165:18 166:5,12 <b>litigator (1)</b> 20:6 <b>little (56)</b> 36:6 39:14 47:20 81:16 88:11 95:8 98:15 107:22 110:6 114:22 115:19 125:17 127:11 133:24 140:19 145:7 147:4,9 148:17 149:13 154:17 161:2,4 188:22 208:9 243:6 243:14 248:15 251:11 253:7 254:24 255:3,4,6 256:10 259:7 260:13,18 262:3,8 264:2,5,9,24 268:20 271:25 277:22 278:21 279:7,15 282:8 284:7,16 287:17 293:24 295:23 <b>live (3)</b> 3:10 210:24 289:8 <b>lobbying (1)</b> 296:7 <b>lobbyists (2)</b> 12:8 15:21 <b>local (11)</b> 181:14,17,19,23 182:10,15,17 186:21 202:8 239:15 268:7 <b>locale (1)</b>
---	---	---	--	--

<p>253:21</p> <p><b>locally (1)</b> 182:18</p> <p><b>locate (3)</b> 107:17 185:15 205:16</p> <p><b>located (2)</b> 49:4 58:23</p> <p><b>location (14)</b> 49:7 56:5,6 64:19 68:16 72:21 89:16 108:7,16 157:2 214:14,14 246:21 272:17</p> <p><b>locations (11)</b> 50:9,10 55:8,10 64:15 64:16 108:12 214:13,15 258:25 262:6</p> <p><b>logic (1)</b> 211:23</p> <p><b>Logistics (1)</b> 30:24</p> <p><b>long (18)</b> 21:12 30:25 31:6 32:5 41:11 42:14 119:4 127:11 133:25 158:19 171:18 231:6 239:12 255:17 271:14 275:5 277:4 297:10</p> <p><b>long-term (6)</b> 187:18 189:4 229:15 239:10 253:13 256:13</p> <p><b>long-time (1)</b> 20:16</p> <p><b>longer (1)</b> 182:19</p> <p><b>look (51)</b> 34:23 35:2 41:15 55:22 57:3 58:2 59:4 61:7 62:8,10 62:21 63:14,17 64:24,25 66:19 68:11 70:13 72:8 78:21 82:8,24 86:4 86:12,15,16 87:18 98:4 102:2 114:7,12 116:22 122:25 129:8 139:19 161:4 161:7 162:4 168:7 184:25 208:6 209:25 221:10 222:6 226:2 233:13 249:14 255:21 257:17 264:14</p>	<p>295:16</p> <p><b>look-back (1)</b> 139:4</p> <p><b>looked (9)</b> 84:7 86:6,8 116:7 129:17 146:18 155:6 161:18 220:9</p> <p><b>looking (16)</b> 34:9 49:2 85:16 86:23 92:10 177:24 187:10 225:22 226:11 229:15 243:25 251:16 259:4 277:24 290:22,25</p> <p><b>looks (4)</b> 135:16 154:18 226:18 270:21</p> <p><b>loopholes (3)</b> 254:20 255:5 260:16</p> <p><b>lose (1)</b> 289:20</p> <p><b>losing (2)</b> 258:21 274:14</p> <p><b>lot (41)</b> 8:14 12:23 21:4 89:23 110:25 145:25 159:2 163:2 184:14 184:22 186:9 197:3 206:3,9,10,11 209:16 214:7 225:6 234:24 235:15 237:17 238:2,19 240:25 242:10 244:24 246:8,19 255:15,16,18 264:22 265:17 271:20 272:14 281:3 283:24 285:17 286:13 292:5</p> <p><b>lots (3)</b> 37:24 237:20 295:13</p> <p><b>low (1)</b> 186:19</p> <p><b>low-cost (1)</b> 67:2</p> <p><b>lower (5)</b> 230:11 261:2 263:15 263:23 291:25</p> <p><b>lowered (1)</b> 42:9</p> <p><b>lowest (1)</b> 5:14</p> <p><b>lucrative (2)</b> 261:3,9</p>	<p><b>M</b></p> <p><b>ma'am (1)</b> 75:14</p> <p><b>Macht (1)</b> 3:25</p> <p><b>macroeconomic (1)</b> 257:18</p> <p><b>magic (1)</b> 283:20</p> <p><b>main (6)</b> 20:20 79:5 83:19 243:3,15 260:23</p> <p><b>maintain (1)</b> 198:17</p> <p><b>maintained (1)</b> 157:18</p> <p><b>maintaining (3)</b> 73:23 74:21 198:14</p> <p><b>major (4)</b> 31:5 210:25 231:7 254:23</p> <p><b>making (23)</b> 34:11 65:6 117:13 179:5 187:19 192:15,17 197:6 203:18 204:17 209:18,23 210:21 211:4,6 212:2,22 213:3,8,19 218:25 223:17 238:7</p> <p><b>man (8)</b> 25:20 37:15 43:18 50:5 51:10 52:17 57:14 71:7</p> <p><b>manage (2)</b> 33:25 234:19</p> <p><b>management (6)</b> 97:7 100:15 103:22 112:9 140:16 167:17</p> <p><b>managing (1)</b> 31:19</p> <p><b>mandate (2)</b> 240:20,24</p> <p><b>manipulate (1)</b> 169:17</p> <p><b>manner (2)</b> 82:9 142:2</p> <p><b>March (10)</b> 1:11 2:5 48:10,10,11 48:13 54:23 60:25 64:5 300:20</p> <p><b>market (3)</b> 181:14,17,19</p> <p><b>marriage (1)</b> 300:15</p>	<p><b>Mary (4)</b> 1:22 2:10 300:6,22</p> <p><b>Massachusetts (2)</b> 210:23 211:16</p> <p><b>master's (1)</b> 30:4</p> <p><b>matches (1)</b> 275:12</p> <p><b>material (1)</b> 103:25</p> <p><b>matter (15)</b> 79:8 85:15 98:8 109:11,17,21 111:3 116:13 178:14 198:18 223:9,16,19 223:20 300:17</p> <p><b>matters (6)</b> 4:10 10:20 33:10 178:11 182:24 231:13</p> <p><b>maximize (2)</b> 184:19 227:6</p> <p><b>maximizing (3)</b> 182:23,25 183:8</p> <p><b>maximum (2)</b> 229:17 230:9</p> <p><b>mean (25)</b> 6:16 33:12 91:12 109:10 114:23 119:10 120:18 131:13 132:19 133:2,3 137:8 139:7 146:3 151:18 158:21 181:5 182:25 185:2 214:19 249:22 263:12 266:12 277:10 294:15</p> <p><b>meaning (1)</b> 137:3</p> <p><b>meaningful (2)</b> 288:9,12</p> <p><b>meaningfully (1)</b> 158:15</p> <p><b>means (11)</b> 28:2 110:23 122:5 132:18,19 150:12 155:2 166:13 219:24 220:4,19</p> <p><b>meant (2)</b> 140:21 220:13</p> <p><b>measure (9)</b> 121:21 203:2 215:24 219:22 251:15 278:9 292:13 295:22 296:6</p>	<p><b>measured (3)</b> 273:4 274:8 275:25</p> <p><b>measuring (10)</b> 120:6 131:3 215:22 215:23 223:9 224:5 224:7 228:21 229:6 273:24</p> <p><b>mechanism (4)</b> 139:16 140:5 158:12 203:10</p> <p><b>mechanisms (1)</b> 194:20</p> <p><b>median (1)</b> 5:14</p> <p><b>Medicaid (3)</b> 80:5,7,8</p> <p><b>meet (14)</b> 54:17 108:22 115:9 143:25 145:3 146:25 195:17,20 208:2,3 209:19 230:12 262:23 263:15</p> <p><b>meeting (6)</b> 60:19 70:24 74:5 99:25 167:2 272:20</p> <p><b>meetings (1)</b> 108:18</p> <p><b>meets (2)</b> 198:7 208:14</p> <p><b>Meisner (3)</b> 27:5 63:4 76:8</p> <p><b>members (5)</b> 3:22 19:9 246:6 297:9 297:11</p> <p><b>Memorial (1)</b> 2:10</p> <p><b>memorializes (1)</b> 101:7</p> <p><b>memorializing (2)</b> 100:13 103:11</p> <p><b>memory (2)</b> 87:4 99:4</p> <p><b>mention (4)</b> 29:20 177:19 219:18 295:20</p> <p><b>mentioned (25)</b> 46:23 51:6 53:22 55:11,24 67:11 185:24 197:15 204:22 207:7 212:12 218:12 227:21 229:12 230:24 233:17 235:13 236:9 243:11 248:13</p>
---	--	---	---	---



254:4 261:18 262:12 279:14 287:10 <b>mentioning (2)</b> 23:9 28:20 <b>mesh (1)</b> 293:10 <b>message (1)</b> 191:8 <b>messier (1)</b> 294:19 <b>met (11)</b> 12:23 13:10 29:4 87:19 139:6 140:25 141:2 174:24 213:21 222:25 224:22 <b>metaphor (1)</b> 120:2 <b>method (2)</b> 116:17 285:23 <b>methodology (3)</b> 86:18 91:5,23 <b>methods (1)</b> 243:15 <b>metrics (5)</b> 236:21 237:5 245:21 291:20 292:16 <b>metro (1)</b> 202:11 <b>mid (4)</b> 48:10 127:23 128:14 128:18 <b>middle (2)</b> 166:21 209:15 <b>migration (1)</b> 186:21 <b>million (15)</b> 17:10 134:10 135:3,9 135:14,15,18 165:5 189:12 244:25 249:17,25 250:24 274:2,3 <b>millions (1)</b> 274:14 <b>Milt (4)</b> 1:16 4:6 19:15,24 <b>mind (14)</b> 67:20 110:14 115:2 127:10 137:18 140:20 143:17 144:23 148:18 170:6,11 188:21 248:10 281:7 <b>mindful (1)</b> 170:13	<b>minimum (10)</b> 42:6,9,9 72:22 73:5 73:13,23 74:22 163:7 262:24 <b>Minneapolis (2)</b> 202:11,16 <b>Minnesota (3)</b> 201:23 203:8,22 <b>Minnesota's (1)</b> 201:20 <b>minute (2)</b> 19:8 62:13 <b>miscalculation (1)</b> 133:7 <b>misconduct (5)</b> 36:24 37:6,11 42:3 48:17 <b>misleading (1)</b> 18:9 <b>mismatch (1)</b> 275:4 <b>misrepresentations ...</b> 70:6 <b>misrepresented (1)</b> 157:22 <b>missed (1)</b> 255:14 <b>mission (5)</b> 3:17,21 21:11,20 291:14 <b>misstate (1)</b> 87:15 <b>mistake (3)</b> 82:4 140:3 168:2 <b>misunderstand (3)</b> 155:13,16 157:3 <b>misunderstanding (1)</b> 127:7 <b>misunderstood (1)</b> 156:12 <b>misusing (1)</b> 13:24 <b>mix (3)</b> 204:6,8 237:4 <b>mixed (1)</b> 187:3 <b>model (4)</b> 201:13 207:24 222:8 222:23 <b>models (5)</b> 159:23 197:10 200:12 201:2,9 <b>moment (1)</b> 282:4 <b>money (54)</b> 5:23 17:12 44:3,5	45:6,12,23 46:8 61:19 65:9 85:19 87:6,7,9 138:2 150:5,12,13 151:12 156:8,9 159:3 182:12,15,18,18,20 183:15,17 184:2,14 184:23 188:10 189:11 190:6 197:3 197:25 202:21,24 222:16 231:13,16 232:8,13 256:25 257:22 259:25 260:5 271:8 277:8 278:15,21 288:8 295:24 <b>monies (1)</b> 190:6 <b>monitor (5)</b> 8:24 112:25 121:7 141:16 142:16 <b>monitored (1)</b> 131:10 <b>monitoring (6)</b> 28:4 112:12 122:7 176:23 218:17 219:13 <b>monitors (1)</b> 25:17 <b>month (6)</b> 249:17,18 250:2,25 251:16,18 <b>months (7)</b> 42:17 61:15 75:8,8 144:6 155:14 287:20 <b>Moreland (1)</b> 20:2 <b>morning (6)</b> 3:2 13:3 26:24 78:5,6 170:5 <b>mother (1)</b> 261:24 <b>move (23)</b> 5:8 7:5 52:20 53:4,5 53:11 61:13,23 62:11,22 63:2,8,12 64:9 75:21,24 93:7 106:15 128:24 130:10 152:12 157:24 187:4 <b>moved (2)</b> 31:23 72:17 <b>mover (1)</b> 177:16 <b>moves (2)</b>	5:6 238:9 <b>moving (14)</b> 51:12 62:5 68:9 71:3 155:15 186:22 214:13 215:18 229:11 255:19 260:13 264:25 274:23 276:4 <b>multi-faceted (1)</b> 180:2 <b>multiday (2)</b> 10:17 22:7 <b>multinational (1)</b> 285:12 <b>multiple (3)</b> 93:11 214:12 267:7 <b>multiplication (1)</b> 164:25 <b>multiply (1)</b> 165:4 <b>municipalities (2)</b> 80:25 261:7 <b>municipality (1)</b> 266:3 <b>Murphy (2)</b> 3:13 9:15 <hr/> <b>N</b> <hr/> <b>naive (1)</b> 215:25 <b>name (11)</b> 3:3 24:2 27:13,16 28:20,21 35:19 39:9 78:14 101:19 126:2 <b>named (3)</b> 23:14 25:20 102:5 <b>names (6)</b> 22:9 23:10 35:5 36:17 153:22 157:14 <b>naming (2)</b> 30:21 51:17 <b>narrow (1)</b> 99:19 <b>narrowed (1)</b> 253:15 <b>national (1)</b> 25:13 <b>nationally (2)</b> 174:11 181:12 <b>natural (1)</b> 137:17 <b>nature (6)</b> 85:4 161:23 218:15 246:22 261:8 270:21 <b>navigate (1)</b>	267:8 <b>NBA (2)</b> 132:15 136:5 <b>near (1)</b> 140:13 <b>nearly (2)</b> 8:11 230:16 <b>necessarily (9)</b> 139:3 147:15 201:13 225:16 258:17 279:3 288:16,17,19 <b>necessary (5)</b> 16:11 84:12 94:7 179:8 255:11 <b>need (21)</b> 15:18 16:15 96:16 124:14 149:4 180:5 180:23 211:11 212:7 216:12 226:6 238:13 239:18 256:23,24 281:12 285:3,4 287:8 290:4 290:19 <b>needed (4)</b> 11:15 52:6 72:23 221:18 <b>needs (11)</b> 131:15,16 142:16 168:11 179:22 180:15 185:4 187:17 218:11 227:8 257:13 <b>negative (2)</b> 183:11 186:24 <b>negotiating (1)</b> 61:14 <b>negotiation (2)</b> 45:12 268:10 <b>net (26)</b> 107:20,23 130:14,17 130:20 131:14 132:15,24 134:6,13 134:17 135:21 207:6 255:5 272:3,6 272:8,21,24 273:18 273:22 274:7,16 275:11,24 276:18 <b>networks (1)</b> 182:17 <b>never (9)</b> 9:22 11:7 67:20 72:20 109:12 280:6 282:4 282:15,16 <b>new (230)</b> 1:4,10 2:10,13 3:6 4:13,20,22,24 5:7,8
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5:10,13 8:9 9:10 17:12,23 19:25 20:18 24:7 25:16,21 25:22,24 28:9 31:23 32:3 39:4,7 40:9 42:7 43:10 45:17,25 46:18,22 47:4,7,23 48:2,7 49:2,4,9,19 50:3,11,14 51:12,18 52:12,18,22 53:9,11 53:12 54:9,22 55:4 55:16 56:5,8,9,19 56:24,24 57:22 58:7 58:9,19,22 59:2 60:2,15,21 61:16,19 62:6,11,16,22 63:2 63:2,9,12,18,22 64:2,10,17 65:8,10 66:11 67:7,16,25 68:18,20,22,23 69:25 70:7 71:4,14 71:22 72:6,12,14,24 73:2,7,16,19,24 74:10,19 75:10 78:12 84:4 86:10 90:19 97:2 102:25 107:5,17,21,23 108:9,24 119:5,11 127:22,22 128:17 128:21,21 134:9,19 142:21,22 145:2 150:14,21 153:19 163:15,18 164:4,8 172:11,18 174:13 174:20 175:3,6,15 177:6 179:18 180:2 181:22 182:20 189:4 198:9 203:5 205:4,25 206:6,23 212:13 220:23 221:2 222:8 224:12 229:22 230:22,24 233:16,19 234:6 235:10,17 236:4,6 236:25 237:19 238:18 239:25 240:16 241:9 242:4 242:7,15,16,19,21 243:19 244:5,19,20 246:10,12,16,17 247:3,14 248:20 249:12,19 257:4 258:12 259:6,10,13 259:25 262:2 264:4 264:11 265:6,22,25 266:12,25 271:2,24	274:13 275:4 279:19 284:22 286:25 287:22 288:12 <b>Newark (4)</b> 78:12 264:25 265:2,2 <b>nine (2)</b> 18:20 220:6 <b>NJ (7)</b> 127:20 128:6 174:5 201:22 209:14 231:2 254:9 <b>NJPP (6)</b> 242:24 266:16 279:18 289:13 295:2 296:5 <b>NJPP's (1)</b> 253:10 <b>nod (1)</b> 267:10 <b>noncompliance (1)</b> 144:12 <b>noncompliant (9)</b> 17:15,18 136:25 137:7 138:10 140:23 141:3,6 147:23 <b>noncooperative (1)</b> 18:2 <b>nondisparagement ...</b> 23:22 <b>nonexistent (1)</b> 112:13 <b>nonfinancial (1)</b> 185:2 <b>nonpartial (1)</b> 228:23 <b>nonpartisan (2)</b> 25:7 171:23 <b>nonprofit (2)</b> 194:2,9 <b>nonprofits (1)</b> 287:10 <b>normal (1)</b> 100:12 <b>North (2)</b> 204:5 269:13 <b>northern (2)</b> 150:24 164:15 <b>not-for-profit (1)</b> 171:23 <b>Notary (2)</b> 2:13 300:8 <b>note (1)</b> 132:12 <b>noted (2)</b> 93:24 298:3	<b>notes (1)</b> 230:11 <b>notice (1)</b> 50:8 <b>noticed (1)</b> 154:9 <b>notified (1)</b> 108:10 <b>noting (1)</b> 218:17 <b>notion (1)</b> 199:12 <b>notions (1)</b> 13:22 <b>notwithstanding (1)</b> 283:16 <b>nuanced (1)</b> 235:16 <b>number (65)</b> 9:16,16 10:7 15:9 20:25 21:9 37:9,9 42:6,10 48:25 70:15 72:22 74:22 76:12 98:18 103:17 104:18,19 107:24 108:4,11,13,16,19 108:25 111:19 113:2 120:11 124:5 129:5 131:24 133:3 133:8 152:18 154:10,21 163:8 164:13,21,23 165:5 165:7,7 167:4 178:5 179:14 188:14 194:20 204:19 209:24 213:25 216:8,19,24 219:7,8 219:17 226:9 228:12 232:6 233:15 251:9 272:16 280:24 <b>numbers (19)</b> 8:7 42:19 45:14 56:14 71:13 118:16 119:20 122:9 125:5 128:2 155:18 157:15 169:18 230:8 233:6 248:17 250:5 251:13,14 <b>numerous (2)</b> 112:8 279:19 <hr/> <b>O (1)</b> 1:13 <b>oath (2)</b>	166:15 171:9 <b>objected (1)</b> 70:23 <b>objections (1)</b> 71:17 <b>objectives (2)</b> 115:10 180:6 <b>obligated (2)</b> 54:8 278:4 <b>obligation (5)</b> 22:17 23:21 110:9 142:8 288:15 <b>obligations (6)</b> 87:19 117:16 208:4 232:21 263:15 288:2 <b>observation (1)</b> 154:20 <b>observed (1)</b> 28:18 <b>obtain (1)</b> 169:20 <b>obvious (5)</b> 116:5,6 121:16 159:6 270:2 <b>obviously (22)</b> 18:2 21:25 28:14,15 28:25 29:14 78:25 85:14 91:14 109:16 123:8 144:18 154:5 159:5 199:15 206:2 221:4,11 253:21 278:13 280:21 288:10 <b>occasions (1)</b> 108:10 <b>occur (1)</b> 119:25 <b>occurred (1)</b> 24:13 <b>Ocean (1)</b> 261:14 <b>October (3)</b> 41:14 54:10,19 <b>odds (2)</b> 265:20 269:20 <b>offer (14)</b> 14:15 172:7 183:5,14 183:18 184:20 185:20 188:12 190:7 212:9 219:2 233:2 234:5 297:9 <b>offered (2)</b> 233:20 244:18 <b>offering (5)</b> 184:16 205:13,15	213:15 286:21 <b>offers (4)</b> 174:15 202:25 204:22 205:10 <b>office (30)</b> 9:5 23:3,4 61:15 68:22 78:19 79:23 79:24 80:4,13 85:11 89:25 91:3 92:12,13 92:13 100:19 125:8 128:4 147:16 152:3 162:13 180:20 224:17 229:2,4,25 230:4 233:15 282:18 <b>office's (2)</b> 13:2 124:9 <b>officer (4)</b> 25:11 33:13 48:21 171:21 <b>officers (1)</b> 47:2 <b>offices (4)</b> 227:25 228:2,2 229:8 <b>official (1)</b> 211:5 <b>officials (1)</b> 208:24 <b>oftentimes (1)</b> 161:11 <b>oh (3)</b> 41:21 281:19 282:25 <b>OK (25)</b> 28:23,24 41:23 48:15 59:9 61:4 66:18 76:4 78:8 79:18 97:11 112:4 118:10 125:13 140:11 141:12 145:6 146:16 148:5 149:12 150:11,17 215:7 238:20 281:21 <b>old (3)</b> 110:2 266:2 276:12 <b>once (8)</b> 51:11 111:22 156:7 159:16 183:22 200:6,7 207:21 <b>one's (1)</b> 247:21 <b>one-to-one (1)</b> 183:10 <b>ones (6)</b> 87:6 193:7 200:16 202:2 209:6 275:2
---	--	---	---	--

<b>onus (1)</b> 130:16 <b>open (4)</b> 170:11 231:3 274:19 287:13 <b>opening (29)</b> 3:1 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 96:12,13 98:22 98:25 99:5 268:23 <b>operate (2)</b> 119:9 207:13 <b>operating (1)</b> 79:12 <b>operation (1)</b> 116:17 <b>operations (2)</b> 67:3 104:24 <b>opine (1)</b> 142:24 <b>opinion (5)</b> 53:23,24 245:16 252:20 276:9 <b>opportunities (9)</b> 204:20 205:23 233:7 234:2,8,9,17 272:2 296:22 <b>opportunity (11)</b> 4:14 11:12 14:15 15:3 67:4 126:20 232:10 240:21 244:8 255:14 297:14 <b>opposed (4)</b> 181:13 266:6 291:23 291:24 <b>opt (1)</b> 138:12 <b>option (5)</b> 67:2 138:13 216:6,21 271:13 <b>options (7)</b> 49:8 137:6 141:6 185:2 187:24 233:16 234:11 <b>order (18)</b> 3:13 9:15 52:17 72:25 74:23 85:9,23 86:10 86:11 166:22,23 167:4 169:19 214:16 215:2 221:18 222:5 237:7 <b>organization (5)</b> 89:21 92:19 93:10	162:7 171:24 <b>original (3)</b> 136:5 254:21 283:14 <b>OSC (1)</b> 134:15 <b>ostensibly (1)</b> 49:16 <b>out-of-state (13)</b> 50:21,23 52:7 55:8,12 55:23 56:2 63:21 108:7,11 181:11 202:4 234:14 <b>out-of-the-state (1)</b> 205:6 <b>outcome (2)</b> 238:14 300:16 <b>outgrowth (1)</b> 292:11 <b>outlined (1)</b> 86:7 <b>outraged (1)</b> 264:24 <b>outset (2)</b> 6:12 137:8 <b>outside (6)</b> 71:4 129:10 144:19 160:4 202:16 228:4 <b>overall (18)</b> 45:9 207:6 245:4,21 247:5,12 255:7 263:4 264:12 265:22 269:17,21 269:24,25 271:15 271:18 277:2 278:8 <b>overcome (1)</b> 170:15 <b>overhauled (1)</b> 244:10 <b>overpaid (1)</b> 115:17 <b>overpayment (2)</b> 115:15 138:19 <b>overpayments (1)</b> 117:19 <b>oversaw (1)</b> 19:21 <b>oversee (2)</b> 285:24 286:4 <b>overseeing (1)</b> 284:13 <b>oversees (1)</b> 6:3 <b>oversight (37)</b> 3:19 9:13 12:18 25:14 26:5 84:19 85:12 112:10,12 140:16	141:25 142:2,6,9 172:9,20 173:5 176:19,21 177:19 223:5,7,8 230:20 233:8 235:11 241:6 277:23 279:16,20 280:4 281:9 284:17 285:17 286:8,10 289:21 <b>overstated (1)</b> 115:16 <b>overstatement (1)</b> 115:15 <b>overview (1)</b> 246:6 <b>owe (2)</b> 190:14,18 <b>owned (1)</b> 182:18 <b>owns (2)</b> 185:17 192:16 <hr/> <b>P</b> <hr/> <b>P (95)</b> 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1 98:1 99:1 100:1 101:1 102:1 103:1 104:1 105:1 106:1 107:1 108:1 109:1 110:1 111:1 112:1 113:1 114:1 115:1 116:1 117:1 118:1 119:1 120:1 121:1 122:1 123:1 124:1 125:1 126:1 127:1 128:1 129:1 130:1 131:1 132:1 133:1 134:1 135:1 136:1 137:1 138:1 139:1 140:1 141:1 142:1 143:1 144:1 145:1 146:1 147:1 148:1 149:1 150:1 151:1 152:1 153:1 154:1 155:1 156:1 157:1 158:1 159:1 160:1 161:1 162:1 163:1 164:1 165:1 166:1 167:1 168:1 169:1 170:1 299:5 <b>P-H-I-L-I-P (1)</b> 78:16	<b>p m (2)</b> 169:3 298:3 <b>Pablo (4)</b> 1:19 4:7 20:16 171:8 <b>pack (1)</b> 237:17 <b>pad (1)</b> 286:23 <b>page (30)</b> 38:20 46:24 55:13 58:2 59:16 61:7 62:8,15 63:14 64:24 66:19 67:18,21,21 70:15 72:8 102:3,10 102:20 107:14 114:25 115:5 118:5 124:12 127:6 132:6 143:12,21 153:10 299:3 <b>pages (1)</b> 62:14 <b>paid (2)</b> 135:14 137:16 <b>pamphlet (2)</b> 96:11 97:5 <b>paper (1)</b> 271:24 <b>papers (1)</b> 172:5 <b>paperwork (1)</b> 50:8 <b>paragraph (38)</b> 46:25 47:10 55:13,23 57:3 58:3,12 59:5,7 59:8,17 60:6 61:8 62:9,15,20 63:15 66:20,22 67:18,19 67:21,24 68:12,15 70:13 72:9 103:14 104:8 107:3,7,14 112:5 131:25 133:20 143:18 144:22 153:5 <b>paragraphs (7)</b> 41:16 60:9 64:25 65:4 107:11 112:6 132:3 <b>parameters (1)</b> 141:25 <b>parse (1)</b> 180:6 <b>Parsippany (1)</b> 75:25 <b>part (51)</b> 21:20 27:19 37:21 39:25 44:6 52:3 55:15 56:7 58:18	67:10 68:25 72:16 75:24 85:6 96:4 97:11 100:23 105:22 114:6 117:13 118:21 121:11 127:18 132:13 138:10 147:20 156:20 158:5 159:11 163:10 167:12 170:6 173:8 177:21 210:17 217:11 219:20 236:15 240:19 247:25 253:13 264:11 265:2 270:22 275:15 278:18 283:23 291:6 292:12 293:14 294:10 <b>part-time (2)</b> 214:9 216:9 <b>partial (1)</b> 134:13 <b>partially (2)</b> 177:13 223:19 <b>participant (1)</b> 69:5 <b>participate (5)</b> 14:15 16:3,5 195:16 195:19 <b>participating (1)</b> 158:14 <b>participation (1)</b> 172:3 <b>particular (16)</b> 4:22 135:2 136:8 182:3 196:25 199:2 201:19 202:7 219:23,25 225:14 237:8 262:16 280:18 287:2 291:15 <b>particularly (5)</b> 197:15 236:4,11 247:3 277:15 <b>parameters (1)</b> 300:14 <b>parts (3)</b> 112:2 251:8 297:4 <b>party (1)</b> 280:13 <b>Passaic (3)</b> 5:17 236:14 261:18 <b>passed (2)</b> 283:11,19
---	---	--	--	---

<b>Patel (7)</b> 1:18 4:7 20:12 240:10 291:7 296:12 299:7 <b>Patterson (3)</b> 5:18 236:13 261:18 <b>Paul (2)</b> 202:11,16 <b>Pause (1)</b> 69:7 <b>pausing (1)</b> 223:24 <b>pay (6)</b> 44:18 54:13 183:7 187:5 194:3 222:16 <b>paying (6)</b> 217:10 242:6 247:22 252:14 253:12 285:3 <b>payment (7)</b> 87:20 138:19 139:25 140:3 145:20 146:11 148:15 <b>payments (3)</b> 117:19 150:11 152:20 <b>payroll (3)</b> 72:18 75:21 156:18 <b>peculiar (1)</b> 21:19 <b>peel (1)</b> 163:4 <b>penalties (1)</b> 39:4 <b>penalty (1)</b> 16:7 <b>pending (4)</b> 38:6 96:15 100:3 104:20 <b>Pennsylvania (1)</b> 267:13 <b>people (51)</b> 3:9 7:14,21 10:4,5,7 12:4,14 22:9,14,22 73:10 79:14 81:6 82:23 101:18 114:8 116:7,8,25 117:9,14 118:3 122:2,18 123:15 138:6 145:12 150:4 152:13 165:11,16 166:2,13 167:12 168:6 182:2 186:9 186:22 187:4 204:8 206:18 211:7 212:3 212:12 214:14,15 215:10 255:15 266:9 295:13	<b>percent (16)</b> 45:8 67:6 108:22 156:25 264:17,20 265:9 272:25 273:2 273:3,18 274:4,7 275:11 276:14 290:7 <b>percentage (1)</b> 265:15 <b>perfect (3)</b> 277:22 280:4 285:23 <b>perform (8)</b> 9:18 10:5 84:23 85:11 85:18 160:5,16 197:12 <b>performance (37)</b> 82:16,19 83:5,22 96:3 98:4 113:2,6,8,11 121:22 122:14 134:24 141:16 159:21 160:21 195:23 196:24 197:7 198:5,12,23 208:3 214:18 216:14,23 218:16 218:18,19 219:5,14 220:16 221:9 224:5 224:6 228:18 230:13 <b>performance-based...</b> 195:21 207:24 222:8 222:11,23 <b>performed (1)</b> 160:22 <b>performs (2)</b> 80:20 198:7 <b>period (17)</b> 23:19 86:3 103:2,10 129:11 134:21,25 148:20 149:2,15,16 149:20 151:14 252:6 255:17 277:5 284:24 <b>periods (1)</b> 144:4 <b>perjury (1)</b> 16:7 <b>permission (1)</b> 172:23 <b>permits (1)</b> 196:9 <b>person (11)</b> 37:10 45:13 49:21 78:10 156:19 167:8 204:16 212:20,22 215:8,8	<b>personally (2)</b> 90:18 279:18 <b>perspective (33)</b> 25:22,24 77:9 154:19 187:3 204:10 210:20 212:4,20 228:23 242:15,17 242:20 244:5 245:8 248:21 255:9 258:14 259:9 260:9 262:3 265:12 267:21 269:9 277:21 278:2,18 280:15 284:14 285:18,22 286:18 293:23 <b>perspectives (4)</b> 203:24 211:25 212:2 271:25 <b>Pew (7)</b> 25:5,12 171:22 175:18 177:22 228:9 279:17 <b>Ph.D (1)</b> 273:21 <b>phantom (1)</b> 108:16 <b>Philip (4)</b> 3:13 24:7 77:17 78:15 <b>phrase (1)</b> 137:2 <b>picked (2)</b> 89:3 166:7 <b>picture (2)</b> 192:22 231:21 <b>piece (6)</b> 92:2 199:21 228:16 240:24 247:15 285:7 <b>pieces (1)</b> 192:22 <b>piggybacking (1)</b> 265:18 <b>place (13)</b> 11:8 14:20 91:21 118:14 123:18 135:22 183:16 191:11 192:18 207:3 209:14 221:10 225:25 <b>placed (2)</b> 53:16 55:24 <b>places (6)</b> 116:2 186:4 190:11 221:25 293:4 295:25	<b>plaintiff (7)</b> 107:4,24 108:2,10,15 108:24 166:18 <b>plan (21)</b> 7:8 9:12,25 18:17 42:6 68:19 91:20 92:14,17 93:2 94:21 94:25 138:17 139:2 147:20,21 148:3 158:2 226:7 272:6 296:25 <b>planned (3)</b> 7:5 169:13 276:6 <b>planning (8)</b> 32:20,23 33:3 34:4 35:11 37:18 39:21 293:22 <b>plans (5)</b> 5:7 7:7 110:14 211:13 212:17 <b>play (4)</b> 119:23 182:13 241:8 244:14 <b>played (1)</b> 295:4 <b>plays (1)</b> 280:12 <b>please (23)</b> 26:9 27:12 38:18,24 43:16 55:12 61:11 63:5 67:18 70:14 77:16 78:13 99:23 101:14 102:19 103:16,18 110:19 124:6 126:10 137:19 148:19 175:15 <b>pleased (1)</b> 20:21 <b>plug (1)</b> 9:13 <b>plus (1)</b> 261:19 <b>point (33)</b> 29:12 44:19,24 54:14 76:19 79:16 91:14 99:12 117:17 119:24 121:21 128:19 146:3 147:20 150:10 151:9 162:7 173:22 191:12 221:12,13 225:14,20 231:5 232:16 244:9 253:10,11 257:9 274:20 277:8	278:11 280:25 <b>pointed (3)</b> 94:10 152:16 206:8 <b>pointing (1)</b> 265:19 <b>points (7)</b> 25:3 122:12 132:22 221:5 225:16 226:14 227:18 <b>police (1)</b> 6:9 <b>policies (26)</b> 7:21 8:20 10:8 83:23 96:4 112:13,24 114:19 115:7,13,23 116:2,14,15,16,22 117:7,17 122:3 123:2,10,14,14,16 172:6 294:5 <b>policy (48)</b> 13:11 25:22 118:14 121:17,24,24 122:5 122:18 123:4,19 127:8 128:6 171:24 175:14 176:10 177:4 180:3 205:12 227:17 238:12 240:16 242:2,15,17 242:20,21 243:2,8 244:5 246:2,18 248:21 254:11 255:20 256:24 259:8 262:2,22 263:3 268:4 269:17 271:24 274:20 277:14 280:21 284:14 293:6,10 <b>policy-relevant (1)</b> 228:15 <b>polymaker (1)</b> 269:15 <b>polymakers (4)</b> 25:9 174:5 191:13 207:12 <b>polymaking (2)</b> 267:19,20 <b>political (9)</b> 20:4 203:16,17 242:11 267:21 293:7,19 294:4,18 <b>pool (3)</b> 87:13,24 88:3 <b>population (1)</b> 186:23 <b>portion (3)</b> 59:18 102:20 115:3
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<b>position (13)</b> 19:20 20:19 30:9 31:4 31:8,14 32:12 33:3 33:17 86:22 161:25 197:24 220:25 <b>positioned (1)</b> 227:20 <b>positions (3)</b> 31:9 153:13,15 <b>positive (5)</b> 183:10 186:25 246:24 254:14,18 <b>possibilities (2)</b> 141:10 272:2 <b>possibility (2)</b> 64:9 295:19 <b>possible (13)</b> 39:16 79:7 97:20 111:18 118:25 142:11 159:14 205:17 237:10 273:6 274:10 279:12 297:6 <b>post (1)</b> 265:10 <b>post-EOA (2)</b> 250:4 252:6 <b>posture (1)</b> 18:4 <b>potential (11)</b> 27:25 28:3 122:25 133:16 162:23 185:16 207:19 210:16 216:5 233:22 261:3 <b>potentially (16)</b> 98:3 122:20 174:17 183:11 184:21 186:15 197:22 202:6 204:23,25 205:23 208:18 232:8 260:20 263:18 274:21 <b>power (3)</b> 17:22 268:7 296:2 <b>PowerPoint (1)</b> 173:3 <b>practice (9)</b> 18:22 19:23 96:5 97:16 101:18 122:8 160:18 187:23 280:16 <b>practices (11)</b> 25:13 80:3 83:13 123:7 142:4 172:8 173:4 175:13	209:21 234:7 280:16 <b>pre (5)</b> 244:6 245:7 249:24 264:16,23 <b>pre-award (1)</b> 118:17 <b>precise (1)</b> 92:5 <b>preconceived (2)</b> 13:22 176:2 <b>predecessor (2)</b> 86:12,13 <b>predictability (4)</b> 187:11 190:3,8 195:9 <b>predictable (1)</b> 196:20 <b>predicting (1)</b> 196:13 <b>preparation (2)</b> 15:8 132:21 <b>prepared (5)</b> 55:3 56:22 57:7 172:16 174:4 <b>preplanning (1)</b> 91:16 <b>present (3)</b> 74:7 173:17 281:14 <b>presentation (8)</b> 22:5 25:2 173:3,7,10 174:2 175:12 256:16 <b>presented (5)</b> 47:3,4 58:6 130:6 131:14 <b>presently (1)</b> 257:21 <b>preservation (2)</b> 4:19 12:10 <b>preserve (1)</b> 16:19 <b>preserved (1)</b> 16:10 <b>presided (1)</b> 125:25 <b>president (1)</b> 32:9 <b>pressure (2)</b> 11:6 256:14 <b>presumed (1)</b> 295:14 <b>pretty (6)</b> 7:23 132:19 239:6 259:4 267:5 290:7 <b>prevent (2)</b> 157:19 179:2	<b>previewed (1)</b> 94:12 <b>previous (3)</b> 230:3 231:14 234:2 <b>primarily (2)</b> 238:22 292:18 <b>primary (5)</b> 148:11 172:4 180:7 201:21 236:9 <b>Princeton (1)</b> 236:19 <b>principal (1)</b> 181:2 <b>principals (1)</b> 178:5 <b>principle (4)</b> 17:7 182:22 188:16 201:15 <b>principles (8)</b> 113:24 141:19 177:4 182:13 201:18,24 203:4 210:2 <b>prior (7)</b> 36:25 90:25 92:11,16 93:13 124:15 156:6 <b>priorities (9)</b> 187:22 242:2 253:3,7 253:9,23,25 254:3 271:9 <b>priority (1)</b> 253:16 <b>privacy (1)</b> 283:15 <b>private (5)</b> 18:22 19:23 36:8 160:3 228:5 <b>proactively (1)</b> 277:23 <b>probably (12)</b> 89:19 111:24 120:19 123:6 125:11 137:18 161:24 163:11,16 213:9 286:12 294:12 <b>problem (15)</b> 8:17 9:4 121:19 123:17 136:6 187:15 224:11 225:5 264:21 276:8 277:10 283:13 292:21 293:2 294:2 <b>problematic (5)</b> 15:6 256:5,11 257:14 265:14 <b>problems (18)</b> 8:18,21 9:8,14,21,23	11:24 93:12 115:21 133:8 135:19 138:23 142:11,13 144:17 157:19 178:24 188:17 <b>procedures (10)</b> 7:21 8:20 10:9 83:23 112:13,25 114:19 115:7,13 124:14 <b>proceed (1)</b> 169:6 <b>proceeding (7)</b> 10:17 11:3,11 22:7 76:22 77:15 297:2 <b>proceedings (28)</b> 3:1 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1,18 19:1 20:1 21:1 22:1 23:1 24:1 25:1 173:13 198:20 276:23 300:12 <b>process (80)</b> 9:2 11:4 12:12,16 14:21 15:12,20 16:13 17:12 21:15 49:20 73:17 80:14 80:17 83:8,9 88:5 89:24 91:16 94:2,16 94:18 95:18,25 97:12,19 100:13,22 100:23 101:20 105:22 112:19 116:24 117:3 118:14 119:19 124:24 130:4 131:18 137:14,25 140:16 143:8 145:23 146:4 155:23 158:6,15,16 161:3 170:13 180:16 195:12 203:14 210:8,17 213:2 220:14 229:7 229:10 230:2 232:25 233:9 267:3 270:14,16 271:19 271:20 282:18 284:13,18 286:3,5 290:20,22 291:6 293:6,8 294:4,18 <b>processes (7)</b> 83:16 113:21 159:9 200:23,24 230:3 297:22	<b>procurement (2)</b> 80:10,17 <b>procurements (1)</b> 80:12 <b>produce (1)</b> 16:19 <b>produces (1)</b> 175:8 <b>product (2)</b> 212:14,15 <b>production (4)</b> 14:6 16:15 108:20,23 <b>productions (1)</b> 14:9 <b>products (4)</b> 115:9 181:11,12 202:3 <b>professional (5)</b> 2:11 31:11 33:4 35:13 300:7 <b>professor (11)</b> 1:14 3:4 19:4 20:11 22:25 158:18 162:18 169:13 172:22 235:20 240:18 <b>profit (1)</b> 190:25 <b>profits (1)</b> 230:18 <b>program (132)</b> 4:24,25 9:10 13:23,25 14:3,7,11,16,19 16:23 17:5 18:2,12 23:17 25:25 40:14 40:16 41:7,13 46:16 46:19 48:8 50:3 51:19,23 52:18,22 53:9,13 54:2,6,8,10 54:15,18,22 55:16 56:18 72:6,12 73:16 73:19 74:11,19,23 75:11 83:6,11,17 85:16 86:17 89:15 89:16 108:6 116:10 118:22 121:11 125:5,6 136:8 138:7 142:9 150:20 156:2 159:3 163:15 169:23 172:12 180:21 184:12 185:3,6 187:14 189:21 192:6 195:16,18,19,21 196:8 199:2 201:19 202:20 204:5
---	--	--	---	--

211:11 212:24 213:12,20 215:21 216:4 217:4,24 218:4 219:23,25 220:2,18,19 222:5,9 224:18 225:19 226:20 227:3,5,7,25 228:20 230:10 236:6,18 237:2,5,11 238:3,21 246:13,14 270:3,20 271:5,6,13 284:21 285:6,16 286:24 287:23 288:21 289:7 291:18 <b>program's (1)</b> 270:4 <b>program-by-progr...</b> 193:4 <b>programmatic (3)</b> 179:16 188:3 223:11 <b>programs (157)</b> 3:20 4:16,21 5:5 6:4 6:10 7:25 8:13 12:18 13:14 25:15 27:21 40:4,8 82:11 83:24 84:2,7,13,18 85:21 86:5,9,13,14 86:25 87:5,10 88:6 89:13,18 99:21 100:4 105:4 106:7 112:10,16,20 114:20 115:11 117:14 118:18,20 119:2,3,9,11 125:8 141:17 142:18 161:16,24 163:9 171:25 172:10 175:5 176:11,14,17 176:21 177:12,15 178:18 179:6,14,19 179:20 180:3,4,7 181:4 188:10 189:3 189:6 190:15,16 191:6 193:6,12,15 193:18,24 194:6 195:5,13 198:9 200:13,14 207:14 207:18,19 208:10 208:11,16,23 209:13 211:2 214:5 215:14 219:3 220:8 220:10 221:7 222:17 223:10,12 223:20,22 225:10 226:11 229:17,18	231:3,9,11,15,17 233:11,21 234:4,6 234:12,19,21 235:3 235:12 236:5,5,17 237:18,21 239:2 240:17 242:5,7,22 244:21,22 246:11 246:12 252:25 253:19 256:22 257:2,5 259:18 266:18 269:16,22 269:24 270:19 279:23 287:6 292:2 292:18 297:15,19 <b>progress (1)</b> 22:2 <b>project (21)</b> 13:21 82:13 85:25 95:15,16 128:2 130:23 134:7,7,15 136:3 145:5 197:2 213:16 247:5 261:4 263:16,19,22 272:20 293:15 <b>project's (1)</b> 132:14 <b>project-specific (1)</b> 207:3 <b>projected (2)</b> 234:3 279:25 <b>projects (10)</b> 132:11 143:23 199:3 206:11 221:20 262:10,15 263:9 272:24 273:17 <b>promised (8)</b> 17:21 131:19 133:5 133:14,18 183:15 219:8 272:17 <b>promote (1)</b> 80:2 <b>promoting (1)</b> 221:7 <b>promotional (1)</b> 207:17 <b>proper (3)</b> 148:16 156:22 157:5 <b>properly (2)</b> 113:10 134:18 <b>property (1)</b> 239:14 <b>proposal (2)</b> 213:11,13 <b>proposals (1)</b> 209:20 <b>proposed (2)</b>	108:9 272:12 <b>proposition (1)</b> 119:8 <b>pros (3)</b> 195:4 209:8 233:23 <b>prosecutor (5)</b> 18:20 19:16,16 20:13 20:17 <b>protecting (2)</b> 223:16 283:5 <b>protection (5)</b> 174:21 195:7 196:22 203:2 223:17 <b>protections (13)</b> 178:15,25 187:8,9 188:2 191:11 206:23,24 207:2 223:15 229:13 231:19 234:20 <b>prove (2)</b> 278:4 295:11 <b>provide (26)</b> 15:15 67:4 93:16 99:12 107:19 116:17 120:14 134:5 147:15 162:20 176:21 181:9,14,24 183:4 184:4,15 185:22 194:22 197:11 212:7 227:20 272:5 273:18 284:3 286:10 <b>provided (14)</b> 10:10,12 56:14 61:24 88:3,7,12,22 97:8 99:9 139:8,12 217:20 286:15 <b>provides (8)</b> 25:7 123:4 165:7 172:17 181:16 203:2 211:17 230:6 <b>providing (10)</b> 36:16 45:14 179:7,18 185:12 186:13 192:4 197:14 218:7 260:20 <b>provision (2)</b> 76:13 142:15 <b>provisions (9)</b> 179:12 196:9 218:15 260:14 263:11 269:3 275:14 283:16 284:11 <b>PUBIC (1)</b> 1:9	<b>public (30)</b> 2:9,13 3:6 13:8 16:17 21:22 22:22 24:11 24:24 25:6 79:21 81:8,9,19 94:4 97:12 119:16 130:18 162:23 170:22 171:24 219:11 246:6 257:12 264:23 281:4 297:9,12,21 300:8 <b>public's (1)</b> 140:20 <b>publicizing (1)</b> 207:18 <b>publicly (6)</b> 33:21 81:2 101:18 219:2 243:5,13 <b>pull (1)</b> 165:21 <b>punctuate (1)</b> 147:19 <b>punctuated (1)</b> 149:24 <b>purported (1)</b> 153:14 <b>purpose (3)</b> 204:2 217:6 288:21 <b>purposes (5)</b> 220:16 229:21 238:4 238:6 285:16 <b>pursuant (3)</b> 47:7 113:13,23 <b>pursue (1)</b> 190:20 <b>purview (2)</b> 258:19 286:4 <b>put (25)</b> 11:6 23:21 24:17,20 42:11 50:18 52:19 69:17 91:21 95:3 96:18 101:2 102:21 130:15 139:14 153:25 155:18 159:16 166:14 188:10 202:22 207:13 218:4 249:11 255:15 <b>puts (2)</b> 197:23 281:3 <b>putting (6)</b> 45:24 50:7 77:8 159:15 260:2 275:4	<b>qualification (1)</b> 202:17 <b>qualified (1)</b> 108:20 <b>qualifies (1)</b> 7:25 <b>qualify (9)</b> 72:25 73:2 117:14 158:23 188:9 202:6 205:9 207:20 232:20 <b>qualitative (1)</b> 243:21 <b>qualitatively (1)</b> 146:22 <b>quality (1)</b> 226:17 <b>quantify (4)</b> 149:25 150:7 151:10 152:6 <b>quantifying (1)</b> 150:3 <b>quantitative (4)</b> 221:16 227:12 228:21 243:17 <b>quarter (5)</b> 153:16 155:22 156:10 156:20 215:11 <b>question (68)</b> 36:4 41:20,23,25 59:11 60:7,12 63:5 63:16 66:15 90:5 92:7,22,23 95:6 96:14 97:13,18,23 98:18 99:9,19 105:18 109:7 110:6 110:12 114:5,11,15 116:5 121:17 125:3 125:20 147:8 151:7 155:6 157:23 158:22 188:21 191:19 192:24 194:16,24 195:6 203:7,10 206:18 216:20 221:6 223:24 237:2 238:12 256:21 257:17 258:10 259:3 263:13 267:17,22 273:22 274:19 279:9 281:23 289:4,24 290:14 291:9 294:23 <b>questioning (2)</b> 92:6 282:24
--	---	--	--	--

<b>questions (39)</b> 13:5 29:18 35:4 39:13 75:16 79:11,13 98:18 110:25 114:3 118:9 128:9,25 130:13 132:4 137:17 139:10,12 139:13,15 143:16 143:19 148:6 149:24 152:12 158:20 166:14 173:8 192:9 209:10 216:8 220:22 230:5 235:7,21 241:13 276:25 287:13,15 <b>qui (7)</b> 28:8 35:20,25 36:23 38:21 39:2 40:3 <b>quick (2)</b> 41:15 59:4 <b>quickly (5)</b> 15:3 37:4 143:6 178:19 231:23 <b>Quinones (11)</b> 4:7,8 20:16 171:8,16 201:7 223:25 226:4 235:19 239:21 299:6 <b>QUINONES (1)</b> 1:19 <b>quite (4)</b> 9:17 10:3 184:8 212:7 <b>quote (1)</b> 8:10 <b>quote/unquote (1)</b> 254:15 <hr/> <b>R</b> <hr/> <b>R (1)</b> 1:13 <b>race (2)</b> 257:7,15 <b>raise (5)</b> 26:16 70:5,10 74:3 186:15 <b>raises (1)</b> 285:17 <b>raising (2)</b> 37:5 178:22 <b>ran (2)</b> 95:25 247:19 <b>range (10)</b> 19:3 25:9 187:24 200:12,25 203:23 210:20 211:18 227:22 261:12	<b>rapidly (1)</b> 253:2 <b>rate (2)</b> 183:22 277:6 <b>ratio (1)</b> 183:10 <b>rationale (5)</b> 205:12,17,20 283:4 288:20 <b>reach (1)</b> 190:11 <b>reached (1)</b> 45:22 <b>react (1)</b> 143:5 <b>reaction (2)</b> 74:13,15 <b>read (40)</b> 38:18,24 41:18,20,21 41:22 42:2 59:17 60:5,5,9 61:10 67:21 68:15 70:13 70:19 71:8 72:10 77:14 102:19 103:18 104:18 106:18 107:11 111:20 114:2 118:7 124:6 127:12,13 132:2,2 133:25 146:20 152:14 153:7,8 165:25 224:15 230:14 <b>readily (1)</b> 16:24 <b>reading (8)</b> 105:12 115:2 143:17 146:21 148:21 172:21 177:22 243:21 <b>real (6)</b> 108:12 117:18 224:9 255:14 256:21 267:18 <b>realized (2)</b> 112:21 220:11 <b>really (69)</b> 7:6 23:6,7 24:12 66:11 76:15 89:10 99:15 106:2 109:14 110:20 114:13 116:6 117:8 120:5 131:2 140:7 141:23 148:12 150:3,19 152:7 155:2 158:11 161:22 177:10 180:2,5,15 182:24	184:22,23 185:15 185:21,22 187:23 188:8 191:7,10 193:3 194:17 196:24 200:3 211:10 212:8 218:6 219:20 224:9,24 225:18 232:11 234:23 238:16 242:23 243:3 244:22,25 247:21 251:17 256:19 262:14 263:6 265:8 268:9 269:8,20 282:16 287:8 295:11 <b>Realtime (2)</b> 2:12 300:8 <b>reap (1)</b> 270:19 <b>reason (18)</b> 14:11 17:21 23:5,23 49:9 56:4 63:17 85:18 119:21 151:5 152:5 190:20 212:19 232:11 273:20,21 286:12 286:21 <b>reasonable (3)</b> 192:9 238:12 239:3 <b>reasons (7)</b> 18:4 24:22 157:10 197:17 215:12 278:25 292:17 <b>recalculate (1)</b> 134:12 <b>recalculation (1)</b> 136:2 <b>receivable (1)</b> 83:3 <b>receive (12)</b> 7:22 21:11 27:24 53:6 65:9 80:24 85:22 87:7 100:7 130:22 178:11 198:12 <b>received (19)</b> 14:8 17:8 40:24 44:19 44:24 54:14 69:21 87:6,9,20 104:5 106:20 131:20 135:2,17 153:11,21 210:10 221:20 <b>receives (1)</b> 191:23 <b>receiving (1)</b> 206:13	<b>Recertification (1)</b> 14:16 <b>recertify (1)</b> 16:12 <b>recess (3)</b> 168:10,14 298:2 <b>Recession (1)</b> 244:23 <b>recipient (6)</b> 86:23 113:11 135:2 135:17 144:3 145:3 <b>recipient's (1)</b> 134:23 <b>recipient-reported (...)</b> 120:22 <b>recipient-submitted...</b> 129:25 <b>recipients (6)</b> 84:19 113:19 116:11 143:25 145:2 159:4 <b>reclaim (1)</b> 197:25 <b>Recognizing (1)</b> 169:25 <b>recollection (1)</b> 44:8 <b>recommend (2)</b> 155:8 159:12 <b>recommendation (3)</b> 130:2 228:10 237:23 <b>recommendations (9)</b> 13:16 91:10 128:3 138:21 160:17 162:2 227:17 235:16,24 <b>reconcile (3)</b> 235:23 291:11 292:11 <b>record (25)</b> 27:13 38:19 41:19 61:11 67:10 76:11 77:14 78:14 103:19 105:16 106:18 107:12 115:3 117:25 118:8 124:7 126:10 127:12 132:2 139:8 141:14 153:7 162:20 172:24 300:10 <b>recorded (1)</b> 113:22 <b>records (7)</b> 103:25 217:3,4,8,15 218:2 225:21 <b>recoup (1)</b> 137:15 <b>recourse (1)</b>	158:13 <b>recover (2)</b> 39:4 277:8 <b>recovering (1)</b> 17:12 <b>recreated (1)</b> 91:22 <b>redeemed (1)</b> 192:19 <b>redeems (1)</b> 196:7 <b>redesigned (1)</b> 244:11 <b>redevelopment (2)</b> 4:25 246:15 <b>reduce (1)</b> 5:5 <b>reduced (1)</b> 254:17 <b>reducing (1)</b> 269:23 <b>redundant (2)</b> 39:14 141:5 <b>refer (7)</b> 5:2 14:17 18:12 28:22 82:15 244:8 249:3 <b>reference (3)</b> 58:16 230:16 232:3 <b>referenced (3)</b> 60:8 100:16 235:18 <b>referral (1)</b> 23:2 <b>referred (1)</b> 35:20 <b>referring (3)</b> 97:5 249:4 280:19 <b>reflect (1)</b> 234:7 <b>reform (4)</b> 255:11,15 271:23 279:12 <b>reforming (1)</b> 272:3 <b>refrain (1)</b> 28:19 <b>refundability (2)</b> 191:4 194:18 <b>refundable (2)</b> 190:16 195:2 <b>refused (1)</b> 108:3 <b>regard (6)</b> 45:16 50:17 69:25 190:9 236:4 261:16 <b>regarding (1)</b> 70:25
---	--	---	---	---

<b>regards (1)</b> 69:20	229:22	96:25 97:2,3 110:15 111:5 112:3 113:4 114:12,25 117:18 123:24,25 124:9,10 124:13,18 132:7 137:3 138:9 140:21 143:12,22 147:3 148:21,24 150:2,6 150:10 152:6,14,16 152:22,23 153:10 154:7,9,14 158:16 159:6 166:10 169:10 180:15 219:5 224:4 232:2 248:25 279:23 280:5 281:3,8 282:5 282:14,15,17,22,25 283:16,21 297:7	<b>requests (3)</b> 16:4,15 105:6 <b>require (3)</b> 15:7 139:3 186:16 <b>required (24)</b> 15:11 16:6 42:18 44:18 52:3 54:13,17 58:18 72:22 90:12 105:13 107:19 115:8 134:19 145:4 157:18 214:4 218:3 230:10 273:5,17 275:13 276:3 290:2 <b>requirement (8)</b> 52:11 58:24 108:5 136:8 141:15 149:11 188:6 198:12 <b>requirement's (1)</b> 128:5 <b>requirements (25)</b> 8:2 14:3 15:17 17:6 28:5 42:5 54:18 58:20 84:20 108:22 113:4 115:10 118:22 121:11 137:4 198:7,14 213:21 218:5,9,22 230:13 261:2 272:20 277:24 <b>requires (4)</b> 80:10 90:14 141:18 226:9 <b>requiring (3)</b> 9:18 49:3 128:7 <b>research (19)</b> 25:8 177:2,13 178:3 178:16 181:7 183:13,24 193:17 194:16 211:21 225:16 237:23 240:16 242:21 243:2,15 259:8 284:14 <b>researcher (2)</b> 211:9 259:19 <b>researchers (1)</b> 222:2 <b>researching (1)</b> 175:19 <b>reserved (1)</b> 76:20 <b>reshuffled (1)</b> 62:14 <b>residential (1)</b> 206:8	<b>resolved (2)</b> 109:15 110:2 <b>resource (1)</b> 172:4 <b>resources (5)</b> 4:23 15:5 72:18 75:21 230:9 <b>respect (12)</b> 83:23 84:2 106:7 130:14 138:16 139:24 140:15,22 143:11 179:17 232:2 252:21 <b>respond (3)</b> 94:5 126:21,21 <b>responded (1)</b> 111:8 <b>response (16)</b> 9:11 71:11 85:9 93:25 94:8,11,13 97:3 99:13 111:12 125:16 126:12,18 126:24 127:8 160:11 <b>responses (1)</b> 94:6 <b>responsibilities (4)</b> 33:8 79:22 85:5,7 <b>responsibility (1)</b> 142:6 <b>responsible (7)</b> 57:18 116:18 122:6 180:17 199:20 274:22 281:12 <b>responsive (1)</b> 105:5 <b>rest (4)</b> 18:6 71:9 148:6 268:4 <b>restructured (1)</b> 269:7 <b>result (14)</b> 27:8 37:5 44:4 73:9 87:21 88:4 91:21 107:10 128:3 129:23 130:22 134:15 157:8 243:9 <b>resulted (6)</b> 91:11 99:18 113:7,14 115:14,16 <b>results (6)</b> 17:17 111:21 113:6 122:21 168:8 257:2 <b>retail (2)</b> 32:2,2 <b>retailer (1)</b> 181:20
<b>region (2)</b> 266:7 293:14 <b>regional (2)</b> 30:13 33:21 <b>Registered (2)</b> 2:11 300:6 <b>regs (1)</b> 276:9 <b>regular (6)</b> 50:5 153:19 175:4 216:14 234:25 286:15 <b>regularity (1)</b> 198:22 <b>regularly (4)</b> 177:20 217:9 226:7 233:9 <b>regulate (3)</b> 280:14 285:23 286:5 <b>regulating (1)</b> 284:12 <b>regulation (5)</b> 160:8 274:25 275:7 275:19 284:17 <b>regulations (8)</b> 42:16 43:3,24 46:16 72:6 83:12 115:13 134:19 <b>regulators (1)</b> 104:7 <b>reiterate (1)</b> 170:9 <b>relate (1)</b> 178:7 <b>related (17)</b> 25:3 56:23 68:17 132:10 180:9 191:5 192:14 195:6 198:14 206:17 216:8 217:4 239:9 239:15,15 245:20 300:14 <b>relates (3)</b> 147:2 202:18 216:16 <b>relatively (3)</b> 95:10 168:5 202:10 <b>relator (6)</b> 38:22 39:3,8,17 70:23 71:12 <b>relaxed (1)</b> 202:17 <b>released (1)</b> 94:4 <b>releasing (1)</b>	<b>relevant (14)</b> 12:9 16:20 23:7 34:12 80:22 84:12 86:3 96:8 99:10 103:10 105:6 110:3 228:17 297:10 <b>reliable (1)</b> 21:12 <b>reliance (1)</b> 120:21 <b>relied (1)</b> 130:3 <b>relies (1)</b> 10:11 <b>relocate (3)</b> 58:25 59:21 60:15 <b>relocated (2)</b> 61:18 73:10 <b>relocating (2)</b> 63:18 72:15 <b>relocation (7)</b> 49:7 55:9 56:23 60:18 66:10 72:17 107:21 <b>rely (1)</b> 91:24 <b>relying (1)</b> 151:23 <b>remain (2)</b> 41:12 149:5 <b>remarks (1)</b> 172:22 <b>remember (3)</b> 60:23 76:2 154:13 <b>removal (1)</b> 254:8 <b>remove (1)</b> 203:16 <b>removed (1)</b> 247:11 <b>renegotiate (1)</b> 138:14 <b>renegotiations (1)</b> 144:14 <b>repay (2)</b> 17:7 147:22 <b>repayment (1)</b> 18:11 <b>repeat (1)</b> 63:4 <b>replacements (1)</b> 153:18 <b>report (71)</b> 11:12 81:2 86:7 87:12 91:6,9,11,13,14 92:25 93:17 94:14	<b>report's (3)</b> 114:18 130:13 140:15 <b>reported (9)</b> 1:21 37:8,11,14,20 39:24 91:25 113:15 217:17 <b>Reporter (4)</b> 2:12,12 300:7,8 <b>reporting (10)</b> 144:4 198:23 216:14 217:9 218:3,5,16,20 218:22 220:16 <b>reports (8)</b> 144:4 217:10 224:16 224:20 230:15 248:22 249:3 262:3 <b>representation (9)</b> 47:17 51:7 56:20 97:7 100:16 104:13 105:7 123:22 155:25 <b>representations (7)</b> 67:11 72:2 100:11,21 101:8 103:5 113:7 <b>representative (1)</b> 89:12 <b>representatives (3)</b> 66:3 74:9 101:3 <b>represented (1)</b> 68:17 <b>representing (1)</b> 151:4 <b>represents (1)</b> 102:14 <b>request (8)</b> 79:17 88:4 90:16 95:13 99:14 147:11 290:12 296:21	<b>requests (3)</b> 16:4,15 105:6 <b>require (3)</b> 15:7 139:3 186:16 <b>required (24)</b> 15:11 16:6 42:18 44:18 52:3 54:13,17 58:18 72:22 90:12 105:13 107:19 115:8 134:19 145:4 157:18 214:4 218:3 230:10 273:5,17 275:13 276:3 290:2 <b>requirement (8)</b> 52:11 58:24 108:5 136:8 141:15 149:11 188:6 198:12 <b>requirement's (1)</b> 128:5 <b>requirements (25)</b> 8:2 14:3 15:17 17:6 28:5 42:5 54:18 58:20 84:20 108:22 113:4 115:10 118:22 121:11 137:4 198:7,14 213:21 218:5,9,22 230:13 261:2 272:20 277:24 <b>requires (4)</b> 80:10 90:14 141:18 226:9 <b>requiring (3)</b> 9:18 49:3 128:7 <b>research (19)</b> 25:8 177:2,13 178:3 178:16 181:7 183:13,24 193:17 194:16 211:21 225:16 237:23 240:16 242:21 243:2,15 259:8 284:14 <b>researcher (2)</b> 211:9 259:19 <b>researchers (1)</b> 222:2 <b>researching (1)</b> 175:19 <b>reserved (1)</b> 76:20 <b>reshuffled (1)</b> 62:14 <b>residential (1)</b> 206:8	<b>resolved (2)</b> 109:15 110:2 <b>resource (1)</b> 172:4 <b>resources (5)</b> 4:23 15:5 72:18 75:21 230:9 <b>respect (12)</b> 83:23 84:2 106:7 130:14 138:16 139:24 140:15,22 143:11 179:17 232:2 252:21 <b>respond (3)</b> 94:5 126:21,21 <b>responded (1)</b> 111:8 <b>response (16)</b> 9:11 71:11 85:9 93:25 94:8,11,13 97:3 99:13 111:12 125:16 126:12,18 126:24 127:8 160:11 <b>responses (1)</b> 94:6 <b>responsibilities (4)</b> 33:8 79:22 85:5,7 <b>responsibility (1)</b> 142:6 <b>responsible (7)</b> 57:18 116:18 122:6 180:17 199:20 274:22 281:12 <b>responsive (1)</b> 105:5 <b>rest (4)</b> 18:6 71:9 148:6 268:4 <b>restructured (1)</b> 269:7 <b>result (14)</b> 27:8 37:5 44:4 73:9 87:21 88:4 91:21 107:10 128:3 129:23 130:22 134:15 157:8 243:9 <b>resulted (6)</b> 91:11 99:18 113:7,14 115:14,16 <b>results (6)</b> 17:17 111:21 113:6 122:21 168:8 257:2 <b>retail (2)</b> 32:2,2 <b>retailer (1)</b> 181:20



<b>retailers (2)</b> 205:8,11 <b>retain (3)</b> 41:9 137:15 238:18 <b>retained (12)</b> 113:13,16 121:4,14 130:23 149:4 150:21 163:23 164:2,7 254:16 266:9 <b>retaining (4)</b> 118:21 120:7 153:12 264:19 <b>retention (4)</b> 125:6,7 236:8 246:14 <b>return (4)</b> 45:12,23 184:19 221:23 <b>returned (1)</b> 46:8 <b>returning (1)</b> 276:12 <b>returns (4)</b> 6:20 192:20 200:17 208:17 <b>Revel (1)</b> 222:12 <b>revenue (2)</b> 83:3 200:20 <b>review (6)</b> 12:17 80:14 103:6 153:10 233:12 246:2 <b>reviewed (3)</b> 111:12 125:8 127:24 <b>reviewing (3)</b> 12:19 122:23 230:21 <b>revision (1)</b> 230:25 <b>revocation (1)</b> 273:7 <b>ribbon (1)</b> 270:20 <b>Rich (1)</b> 34:25 <b>Richard (1)</b> 27:5 <b>rid (1)</b> 11:23 <b>riding (1)</b> 8:14 <b>right (68)</b> 4:4 5:16 7:20 8:15,19 14:22 20:11,15 24:24 26:16 29:2 36:22 42:12 45:21	48:13 58:14 62:18 63:15 70:20 75:2 76:4,19,20 77:7 78:10 89:2 93:22 100:7,15 115:4 116:9 119:15 120:9 123:17 125:10 135:16 138:4,14 139:7 141:9 146:2,2 149:16 150:8,16,17 155:4,23 159:7 166:9,21 205:25 212:6,9 227:5 232:23,24 233:14 254:23 257:18 258:3,16 266:10 268:13 273:18 288:2,2,4 <b>right-hand (7)</b> 37:15 43:18 50:4 51:10 52:16 57:13 71:7 <b>rightfully (1)</b> 155:3 <b>rigorous (1)</b> 16:13 <b>ripe (2)</b> 10:15 271:23 <b>rise (1)</b> 26:15 <b>risk (15)</b> 47:23 58:23 123:3 131:11 133:10,12 169:22 264:10,19 274:13 275:5 277:16 289:19 290:15,21 <b>risks (1)</b> 289:15 <b>road (4)</b> 117:9 179:7 191:9 265:25 <b>roads (3)</b> 184:5 187:5 244:6 <b>robust (2)</b> 123:19 142:9 <b>role (12)</b> 11:5 32:8,17 81:15 83:25 85:4 90:8 200:15 209:3 278:19 280:12 295:4 <b>roles (4)</b> 34:14 79:22 103:23 229:9 <b>Ronald (2)</b>	1:14 3:3 <b>room (2)</b> 140:19 204:13 <b>roughly (7)</b> 14:7 67:6 87:2 148:12 150:8 163:25 258:3 <b>RPR (2)</b> 1:22 300:22 <b>rule (1)</b> 79:12 <b>rules (9)</b> 42:16 43:2,24 46:15 72:5 83:12 115:24 115:25 117:8 <b>run (5)</b> 176:17 196:12 246:18 271:14 275:5 <b>running (2)</b> 84:6 243:20 <b>Rutgers (7)</b> 3:4 206:5 221:12,13 221:19 222:2 233:18	138:9 142:10 147:14 188:8 195:17 202:7 223:11 266:14 276:6,13,19 <b>says (9)</b> 7:7 58:12 107:15 132:20 139:18 145:13 200:6 220:17 267:24 <b>scenario (2)</b> 92:20 196:25 <b>scenarios (1)</b> 56:25 <b>schedule (2)</b> 215:3 233:12 <b>school (4)</b> 3:4 34:5 80:25 206:6 <b>schools (2)</b> 184:5 187:5 <b>science (1)</b> 29:25 <b>sciences (4)</b> 210:24,24 211:10,15 <b>scope (12)</b> 13:8 86:2 91:22 95:22 97:21,21 98:9 99:14 99:19 114:6 129:10 160:24 <b>Scott (1)</b> 27:6 <b>screen (1)</b> 178:7 <b>search (1)</b> 244:17 <b>seasonal (1)</b> 153:18 <b>seats (1)</b> 26:10 <b>Secaucus (1)</b> 264:25 <b>second (25)</b> 40:17 58:24 88:24 96:23 101:16 102:3 104:3,8 114:24 129:19 136:6 143:20 144:22 147:7 163:19 165:9 169:14 173:2 174:8 176:15 207:10 213:17 252:13 273:13 278:11 <b>Secondly (2)</b> 21:13 76:23 <b>secret (1)</b> 236:23	<b>section (10)</b> 20:20 61:8 115:5 134:5,5 138:4 141:24 177:5,19 207:10 <b>sections (2)</b> 176:25 227:2 <b>secure (1)</b> 77:3 <b>security (1)</b> 157:15 <b>see (45)</b> 21:13 38:22 47:9 58:4 92:11 94:2 96:18,19 106:16,23 107:7 124:4 126:7 129:8 135:24 143:13 147:7 153:4 162:5 168:10 178:6 183:22 189:2 193:11 198:21 199:5 200:12 211:16 212:19 222:3 224:19 227:3 227:10 228:24 231:9 237:15 238:24 244:16,22 244:24 270:13 283:18,19 290:11 293:9 <b>seek (2)</b> 18:11 216:22 <b>seeking (1)</b> 107:16 <b>seen (15)</b> 148:3 178:17 188:17 188:18 192:15 193:16,18 201:11 203:23 226:3 257:4 266:22 270:25 277:13 295:17 <b>selected (5)</b> 86:21 87:25,25 88:9 88:21 <b>selecting (1)</b> 90:9 <b>selective (1)</b> 212:8 <b>sell (21)</b> 5:25 174:11 181:10 181:11,16 191:24 191:25,25 194:4,10 202:3 205:6 234:14 284:19,23 285:4,20 286:18 287:24 288:14 291:3
--	--	--	--	--

<b>sells (2)</b> 181:19 290:2	209:11 227:17 259:4 274:21 300:19	<b>shorthand (1)</b> 6:5	<b>simplistic (1)</b> 118:25	<b>smaller (2)</b> 221:25 262:21
<b>Senate (1)</b> 283:12	<b>set-up (1)</b> 203:8	<b>shortly (2)</b> 64:6 75:23	<b>simply (8)</b> 10:11 80:16 108:12 149:10 174:2 208:17 215:14 276:11	<b>smart (1)</b> 277:14
<b>Senator (1)</b> 281:22	<b>sets (1)</b> 141:24	<b>shoulders (1)</b> 21:5	<b>single (7)</b> 11:21 86:23 149:11 208:14 245:2 257:13 289:20	<b>smarter (1)</b> 271:17
<b>sence (1)</b> 211:13	<b>setting (2)</b> 84:3 118:14	<b>show (3)</b> 108:2,6 201:17	<b>sir (8)</b> 102:17 103:7 127:5 128:8 132:16 135:5 141:12 266:4	<b>smooth (1)</b> 95:19
<b>send (1)</b> 100:24	<b>settled (2)</b> 23:20 38:8	<b>showed (4)</b> 107:22 157:7 183:18 221:20	<b>sit (7)</b> 89:2 99:3 138:4 149:15 154:17 155:4 166:13	<b>social (3)</b> 157:15 186:14,17
<b>sends (1)</b> 101:4	<b>settlement (2)</b> 45:4,22	<b>showing (1)</b> 210:19	<b>site (3)</b> 108:9 218:14 258:24	<b>sold (3)</b> 192:19 289:9,10
<b>senior (3)</b> 20:13 25:11 171:20	<b>seven (3)</b> 25:23 202:14 256:2	<b>shows (2)</b> 156:19 202:16	<b>sites (3)</b> 185:16,17,18	<b>solemn (1)</b> 22:16
<b>sense (11)</b> 8:2 83:15 94:22 99:20 140:11 142:5 168:6 243:23 265:3 271:21 287:24	<b>Seventh (1)</b> 175:3	<b>shuffled (1)</b> 62:17	<b>sitting (1)</b> 122:4	<b>solemnly (3)</b> 26:17 77:18 171:10
<b>sent (3)</b> 11:20 12:9 73:10	<b>shaming (1)</b> 101:18	<b>side (9)</b> 95:3 121:5 133:25 206:8 228:18,21 229:11 255:23 293:20	<b>situation (14)</b> 10:15 26:7 136:22 141:7 178:13 179:2 194:13 222:19 255:24 268:3 274:13 279:6 289:5 294:7	<b>solution (3)</b> 270:2 294:14,16
<b>sentence (3)</b> 38:20 127:15 147:7	<b>share (4)</b> 186:7 199:3 265:8 297:12	<b>sign (3)</b> 101:2 267:14 276:5	<b>situations (3)</b> 7:16 15:6 133:12	<b>solutions (1)</b> 294:17
<b>separate (2)</b> 199:19 200:5	<b>shared (1)</b> 265:11	<b>signatory (2)</b> 101:19 102:2	<b>six (8)</b> 88:3,7,12,15,22 89:3 155:14 287:20	<b>solved (1)</b> 294:3
<b>separated (1)</b> 251:7	<b>sharing (1)</b> 217:22	<b>signed (6)</b> 9:15 102:13,15 126:15 166:23 276:19	<b>Sixth (1)</b> 174:22	<b>somebody (4)</b> 87:15 139:18 165:21 290:25
<b>September (2)</b> 9:7 76:3	<b>sharp (1)</b> 248:25	<b>significance (2)</b> 79:15 132:23	<b>size (3)</b> 86:19 89:15 291:16	<b>somewhat (2)</b> 192:2 201:22
<b>series (2)</b> 166:17 248:22	<b>sheets (1)</b> 83:2	<b>significant (17)</b> 4:22 19:12,17,20 20:8 21:25 27:19 67:5 103:23 104:23 152:18 154:21 163:24 170:21 254:6 258:7 259:14	<b>skating (1)</b> 273:19	<b>sophisticated (4)</b> 255:19 267:6 285:13 286:24
<b>serious (4)</b> 8:18 9:8,22 271:16	<b>shift (2)</b> 254:11 265:14	<b>significantly (3)</b> 164:12 253:19 269:22	<b>skip (1)</b> 226:5	<b>sophistication (1)</b> 246:17
<b>seriously (2)</b> 62:5 71:3	<b>shifted (3)</b> 253:2 268:6 283:4	<b>signing (2)</b> 167:4,5	<b>skyrocketed (1)</b> 250:3	<b>sorry (21)</b> 32:15 44:15 45:17,19 59:7,23 71:10 75:8 75:15 113:25 114:16 115:16 139:5 142:20 156:11 158:19 167:9 203:6 224:7 252:19 294:22
<b>serve (2)</b> 8:20 204:2	<b>shifting (4)</b> 253:6,9,23,24	<b>signs (1)</b> 101:3	<b>slides (1)</b> 203:21	<b>sort (61)</b> 82:12 84:10 86:19 158:21 176:13 177:3 180:5,11 183:9 185:5 188:11 193:16 195:7,21 196:24 197:9 201:17 206:20 207:17,24 208:20 208:22 209:14 210:3,16 212:23 216:3,17 219:2 222:20 225:18 226:13 231:3 233:25 237:17,20
<b>served (1)</b> 19:18	<b>shifts (1)</b> 254:10	<b>similar (10)</b> 109:3 124:19 125:2 154:6,6 162:3 244:6 260:6 268:16 292:2	<b>slight (1)</b> 6:2	
<b>serves (1)</b> 238:15	<b>shine (2)</b> 199:16 243:6	<b>similarities (1)</b> 153:2	<b>slip (1)</b> 99:17	
<b>services (7)</b> 33:4 35:14 186:14,17 229:25 230:4 282:19	<b>shipping (1)</b> 30:23	<b>simple (5)</b> 5:4 132:17 213:24 214:6 215:21		
<b>serving (1)</b> 179:14	<b>short (5)</b> 25:2 77:7 132:3 187:24 236:20	<b>simplify (1)</b> 24:9		
<b>session (4)</b> 169:2 296:19,20 297:8	<b>shorten (1)</b> 196:19			
<b>sessions (2)</b> 297:2,22	<b>shortening (1)</b> 174:14			
<b>set (14)</b> 46:21 84:14 132:11 144:17,19,21 185:6 189:11 207:8	<b>shortens (1)</b> 205:3			
	<b>shorter (5)</b> 184:17 234:15 278:3 278:8,9			
	<b>shortfall (1)</b> 212:6			

239:3,14 244:16 250:18 252:23 253:2,3 255:22 257:10 260:2 261:21 265:20 266:21 267:7 274:10,25 276:22 280:4 281:9 283:20 285:15 286:22 287:11 293:7,22 <b>sorts (2)</b> 266:18 293:9 <b>sound (1)</b> 213:24 <b>sounds (2)</b> 80:6 214:6 <b>source (6)</b> 216:18 218:14 219:19 225:21,24 294:13 <b>sources (2)</b> 216:25 243:12 <b>South (6)</b> 251:11 261:12 262:10 263:9 269:3,13 <b>Southern (1)</b> 20:17 <b>space (3)</b> 61:15 67:3 68:22 <b>span (1)</b> 270:4 <b>speak (8)</b> 28:11 84:17 136:18 152:7 166:7 203:21 279:14 284:16 <b>speaking (4)</b> 6:7 137:11 164:2 213:4 <b>speaks (1)</b> 271:25 <b>spearheaded (1)</b> 49:21 <b>special (5)</b> 3:24 260:17 261:25 282:20 295:4 <b>specialists (1)</b> 203:13 <b>specific (38)</b> 12:20 13:16 28:12 38:16 43:25 95:5 99:2 113:5 133:21 134:3 157:13 172:18 174:3 176:3 178:18 185:4 193:18 194:16 205:12 208:13 210:4 217:4 218:4,5	220:25 228:10 229:19 235:14 246:21,21 247:25 251:17 259:7 289:17 293:3,4,14 293:15 <b>specifically (18)</b> 65:20 112:4,8 129:6 144:2 177:7 223:6 240:16 242:21 243:25 248:23 249:4 251:12,25 260:14 269:2 273:11 284:12 <b>specified (3)</b> 86:9 128:11 157:2 <b>specifies (1)</b> 142:15 <b>spectrum (3)</b> 208:11,23 209:15 <b>speculate (2)</b> 149:18 157:9 <b>spell (2)</b> 27:15 78:13 <b>spend (6)</b> 93:5 182:12,15 204:25 256:25 260:4 <b>spending (11)</b> 178:22 247:9,12,17 247:18 254:8 257:22 263:4 269:25 270:3,15 <b>spends (2)</b> 182:20,20 <b>spent (3)</b> 78:20 108:23 171:24 <b>spike (1)</b> 187:14 <b>split (1)</b> 214:15 <b>spoke (1)</b> 95:8 <b>spoken (4)</b> 260:16 279:11 284:6 291:20 <b>sports (1)</b> 119:23 <b>spreadsheets (1)</b> 243:19 <b>St (2)</b> 202:11,16 <b>staff (9)</b> 90:24 98:17 100:2 129:2 151:10,15 162:13 213:6	227:24 <b>staff's (1)</b> 105:6 <b>stage (8)</b> 14:4 22:19 26:11 94:17 97:19 105:25 118:17 287:19 <b>stages (1)</b> 21:23 <b>stakeholders (1)</b> 113:8 <b>stamped (1)</b> 106:17 <b>stand (1)</b> 77:17 <b>standard (2)</b> 100:23 222:3 <b>standards (2)</b> 195:24 202:17 <b>standing (1)</b> 78:10 <b>standpoint (3)</b> 127:2 195:9 231:13 <b>stands (2)</b> 40:12 270:17 <b>start (7)</b> 30:18,19 107:13 112:7 128:14 177:8 293:13 <b>start-up (1)</b> 190:24 <b>started (13)</b> 11:14 12:12 49:11,15 64:13 87:12,16 128:12,16,20 242:6 268:13 270:6 <b>starting (6)</b> 119:24 121:20 128:18 129:9 157:9 166:15 <b>starts (3)</b> 38:21 115:5 226:18 <b>startups (1)</b> 285:2 <b>state (179)</b> 2:13 3:11 5:11,11 6:3 7:6 9:5,23 15:23 17:24 19:16 20:13 24:6 27:12 36:25 39:3 41:10 42:7 49:9 52:20 53:5 54:12,17 56:9 58:5 58:24 59:2,14 60:15 60:18 61:18 62:6 63:9 64:10 65:8,9 66:11,24 67:8,16 71:4 73:24 74:22	80:12 81:16 84:9,11 91:4 94:13 96:25 105:15 107:18 112:21 123:24,25 124:9,12 128:4 130:21 133:5 139:8 142:12 152:23 153:9 154:22 158:24,25 159:2,23 166:10 171:22,25 174:8,16,22 180:16 180:19 183:3,6 184:3,6,8,14,19 185:7 186:12,13,22 187:4,12,19 189:18 192:3,11,12,20 193:7 194:21 195:15 196:3 197:3 197:4,23 200:2 202:4,13 203:3 204:25 207:12,21 208:24,25 209:18 210:11,13 211:5 212:25 214:13 215:19 217:3,5,18 218:2 219:14 220:6 220:17 221:9 222:14,15,24 224:21 225:3,13,20 228:11,13 229:17 230:9 232:4,12,13 233:17 235:4 236:13 238:8 241:8 244:13,19 251:3,8,9 252:8,14 254:18 257:13 259:10 260:22 261:17 264:10 265:11,21 266:6,11,15 268:7 269:17,18 271:15 272:6 273:6 275:13 276:24 277:12 278:5 279:3 289:11 290:19 297:4,20 <b>state's (11)</b> 4:15 13:13 174:6,10 187:2 189:17 206:25 210:25 230:5 231:16 235:25 <b>stated (5)</b> 47:10 53:10 64:19 165:2 288:21 <b>statement (33)</b> 3:1 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1	13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 53:15 64:4 68:25 77:8 119:6 123:11 128:15 172:17 235:15 291:15 <b>statements (2)</b> 46:20 70:7 <b>states (52)</b> 81:14,17 175:21,23 176:5 177:17,20 178:20 179:11 180:18 182:6 183:25 184:25 187:10 190:20 191:3 192:15,25 193:8 196:12,18 197:11 198:19 199:18 200:4 201:12 203:25 208:7 210:11,19 216:22 217:13,25 219:13 222:18 224:12 225:6,7,25 226:6 227:22 228:3 228:25 231:10 237:15,17 239:7 257:4,7 258:20 267:8 291:25 <b>statewide (6)</b> 134:20,23 136:10 252:5 291:24 293:22 <b>stating (2)</b> 35:5 65:4 <b>statistics (1)</b> 250:21 <b>status (2)</b> 192:21 282:22 <b>statute (12)</b> 17:24 80:10 90:14 134:18 141:23 159:16 164:10 176:12 207:13 222:7 281:24 295:5 <b>statutes (4)</b> 83:12 115:12 116:2 220:10 <b>statutory (3)</b> 84:22 115:10 141:15 <b>stay (17)</b> 50:14 54:8,17 63:9 76:24 136:9 182:2 182:19 239:12
--	--	--	--	---

266:25 273:5 275:13 276:3,7,16 276:20 287:16 <b>staying (2)</b> 63:8 64:2 <b>stems (1)</b> 241:3 <b>step (10)</b> 7:17 14:4 180:13 195:14 196:5 213:17,18 233:8 254:22 265:13 <b>steps (5)</b> 16:8 169:16 196:15 255:25 256:2 <b>stick (1)</b> 250:19 <b>stop (5)</b> 101:15 143:18 144:7 154:2 213:9 <b>stopped (1)</b> 271:8 <b>stores (1)</b> 205:15 <b>stories (1)</b> 170:16 <b>story (2)</b> 169:21 259:2 <b>strategic (2)</b> 31:10 37:18 <b>strategy (15)</b> 11:19 32:10 43:17 57:11 59:24 62:4 64:18 65:21 70:9,11 70:25 71:6,11,17 260:3 <b>streaming (1)</b> 3:10 <b>streamline (3)</b> 98:14 107:4 148:5 <b>streamlining (1)</b> 246:10 <b>streams (1)</b> 83:3 <b>Street (1)</b> 48:24 <b>strength (2)</b> 92:18 222:9 <b>stretch (1)</b> 189:6 <b>stretching (1)</b> 184:13 <b>strong (2)</b> 174:21 275:14 <b>stronger (1)</b> 289:2	<b>strongest (1)</b> 187:25 <b>structure (4)</b> 81:7 84:10 93:9 176:13 <b>structured (3)</b> 117:5 178:12 189:25 <b>struggling (1)</b> 197:21 <b>stuck (1)</b> 158:4 <b>studied (1)</b> 13:12 <b>studies (4)</b> 177:23 193:11 201:9 221:19 <b>study (6)</b> 183:18 206:6 221:11 221:12,13 242:4 <b>studying (3)</b> 171:25 177:15,18 <b>stuff (2)</b> 144:18 245:3 <b>subject (5)</b> 76:15 96:9 98:8 208:19 243:7 <b>subjective (1)</b> 291:5 <b>subjects (2)</b> 11:2 83:20 <b>submission (7)</b> 15:10 39:5 51:24 55:18 60:2 72:2,3 <b>submissions (1)</b> 169:19 <b>submit (4)</b> 9:11 16:6 77:7,13 <b>submitted (11)</b> 15:18 47:18 57:22 69:10 80:13 129:24 144:3 169:23 172:23 200:17 229:24 <b>submitting (1)</b> 57:18 <b>subpoena (2)</b> 27:9 77:3 <b>subpoenaed (1)</b> 76:13 <b>subpoenas (3)</b> 16:16 17:25 170:19 <b>subsequent (4)</b> 11:3 203:21 261:20 297:2 <b>subsidiaries (2)</b> 214:12 216:11	<b>subsidies (2)</b> 244:17 249:2 <b>subsidized (3)</b> 264:18 265:8,10 <b>subsidy (1)</b> 273:3 <b>substance (3)</b> 28:22 173:11 241:12 <b>substantiated (2)</b> 110:8 113:15 <b>substantive (1)</b> 99:12 <b>substitute (1)</b> 277:14 <b>succeed (1)</b> 211:14 <b>success (2)</b> 112:17 292:13 <b>successful (1)</b> 255:10 <b>sudden (1)</b> 187:13 <b>sufficient (5)</b> 129:14 135:25 146:7 159:8 218:3 <b>sufficiently (2)</b> 148:15 176:17 <b>suggest (10)</b> 8:19,22 110:8 130:2 160:25 161:20 204:24 266:17 269:23 275:6 <b>suggested (1)</b> 86:12 <b>suggestions (4)</b> 28:5 172:11 174:3 235:8 <b>suggests (5)</b> 9:16 183:14,25 186:2 186:20 <b>Sullivan (3)</b> 102:6,7 126:16 <b>sum (1)</b> 260:8 <b>summaries (2)</b> 56:24 68:17 <b>summarize (2)</b> 115:20 133:9 <b>summarizes (1)</b> 111:21 <b>summarizing (1)</b> 133:10 <b>summary (6)</b> 103:13,15 111:22 121:12 133:15 175:10	<b>sunlight (1)</b> 199:16 <b>super (1)</b> 293:21 <b>Superior (1)</b> 28:9 <b>supermarket (1)</b> 181:20 <b>supplement (1)</b> 229:13 <b>supplemental (1)</b> 39:9 <b>supplements (1)</b> 128:6 <b>supplier (1)</b> 182:17 <b>suppliers (1)</b> 202:8 <b>support (2)</b> 71:14 118:11 <b>supporting (2)</b> 45:15 47:22 <b>supports (1)</b> 181:8 <b>suppose (1)</b> 138:14 <b>supposed (5)</b> 7:20 41:12 73:6 221:14 279:22 <b>sure (77)</b> 10:3 11:16,19 16:9 36:5 38:25 39:14 41:17,24 52:13 63:6 69:9 70:16 76:10 78:11,15 82:4,7,22 83:10 84:18 88:16 88:18 89:9 92:22 93:3 109:18 114:10 116:24 117:13 120:17 123:15 129:20 130:4,9 131:16,18 133:11 141:14 143:21 144:24 147:13,22 163:5 188:24 190:5 192:15,17 200:8 203:15 204:15 207:25 212:20 213:10,19 218:7 223:4,17 226:6 234:18 238:5,7 243:3,17 244:15 246:8 249:10 250:23 260:23 263:12,21 264:7 269:19 272:8	275:12 277:9 282:8 <b>surge (6)</b> 248:24 249:7,8 250:15,21 252:9 <b>surprise (3)</b> 6:24 139:11 152:15 <b>surround (1)</b> 277:2 <b>survey (2)</b> 64:14,16 <b>susceptible (1)</b> 266:18 <b>suspected (4)</b> 103:21 104:4,14 167:20 <b>suspend (3)</b> 137:12,25 199:14 <b>suspension (2)</b> 141:7 144:15 <b>sustain (2)</b> 7:10,12 <b>SVP (1)</b> 57:10 <b>swear (4)</b> 26:17 77:18 171:10 240:3 <b>sworn (1)</b> 77:7 <b>sympathize (1)</b> 102:23 <b>synthesizes (1)</b> 227:16 <b>system (6)</b> 104:2 154:18 192:18 217:12 254:11 288:13 <b>systems (1)</b> 267:9 <hr/> <b>T</b> <hr/> <b>tab (13)</b> 96:24,24,25 97:2,4,6 101:14 110:18 111:19 124:3 125:18 131:23 153:4 <b>tabbed (1)</b> 124:5 <b>table (1)</b> 172:25 <b>tailored (1)</b> 185:4 <b>take (30)</b> 6:22 8:25 11:11 14:20 15:13 19:8 26:10 35:2 41:15 59:4
--	---	---	--	--

82:8 89:19 108:3 111:24 119:21 138:15 139:23 143:24 155:24 168:9 188:4 198:11 207:12 243:4 244:12 260:19 265:13 267:13 288:10 296:5 <b>takeaway (3)</b> 154:20,23 157:11 <b>taken (4)</b> 93:12 166:18 169:16 177:14 <b>takes (3)</b> 7:13 111:9 199:13 <b>talented (1)</b> 10:4 <b>talk (13)</b> 46:19 117:7 120:12 125:16 176:9 177:5 178:9 188:15 213:22 216:17 222:10 223:5 269:2 <b>talked (5)</b> 81:13 140:18 141:13 167:18 226:25 <b>talking (14)</b> 8:6 45:18 85:3 91:2 117:8 140:21 147:6 150:5 159:11 161:13 165:13 223:8 274:3 277:15 <b>talks (1)</b> 159:13 <b>tam (7)</b> 28:9 35:20,25 36:23 38:22 39:2 40:3 <b>tandem (1)</b> 57:9 <b>tangentially (2)</b> 85:21 142:7 <b>tangible (1)</b> 266:14 <b>target (9)</b> 181:4 186:3 191:21 210:5,6 236:3 265:23 293:13,14 <b>targeted (6)</b> 192:6 201:25 262:5 262:16 263:22 285:8 <b>targeting (15)</b> 174:9,18 202:18 205:24 206:15 227:4 234:13	246:19,23 260:24 261:6,9,11 293:3,4 <b>targets (1)</b> 202:2 <b>task (22)</b> 1:4 3:7,14,16,23 11:12 14:19 21:17 21:19 22:3 27:9 34:22 75:15 159:12 162:14 170:2,9,18 170:23 207:17 287:14 298:2 <b>tasked (2)</b> 84:6 282:21 <b>tasks (4)</b> 82:11 207:16 208:6 221:6 <b>tax (156)</b> 1:6 3:8,19 4:15 5:19 5:20,22,25 6:10,13 6:20 7:2,18 8:5,7,12 8:13 9:2 10:23 11:21 12:6,18 13:13 13:17,24 17:7 18:8 23:16 25:10,15,25 27:20,24 28:6 48:6 52:21 53:12 83:24 84:2,17 85:12 86:5 86:17 100:4 105:4 107:16 108:21 117:14 119:4 135:10 141:17 142:17 150:7,13,19 150:23 151:2 163:14,24 164:3,3 164:11 169:20 171:25 172:5,9,20 173:5 174:25 175:5 175:19 177:21 179:19 183:2,5 190:14,23 191:2,5 191:15,22 192:16 192:19 194:14,21 196:3 198:6 200:13 200:13,14,16,21 203:13,18 208:17 210:24 211:2,19 219:15 224:15 230:17,21 239:14 240:17 241:9 242:4 242:7,10,22 244:17 244:20 245:18 246:10 249:2,12 253:4 257:22 258:7 258:10 260:5 262:19,20 263:24	264:12,18 266:25 268:5 270:14 271:13,18,19 272:12,18,19 273:7 274:3,8 278:7,9,25 279:8 280:21 281:17 284:8,19,21 284:23 285:4,20 286:6,19,21,24 288:23 289:21 297:15 <b>tax-dodging (1)</b> 285:13 <b>taxes (7)</b> 5:6 178:22 183:6 190:19 194:3 267:6 285:3 <b>taxpayer (12)</b> 80:3 85:2,20 133:13 133:17 142:7,8 151:12 245:19,22 265:3 283:6 <b>taxpayers (11)</b> 6:21 113:9 131:5,11 150:14 200:9 241:2 245:11 269:7 275:5 297:19 <b>team (8)</b> 3:23 4:4 19:10,11 95:10 96:5 101:9 111:4 <b>tech (1)</b> 285:2 <b>technical (4)</b> 25:8 185:6 211:4 212:11 <b>teeth (1)</b> 275:10 <b>telephone (1)</b> 21:9 <b>tell (21)</b> 20:23 29:15 34:7 40:7 40:11 51:11,15 54:4 55:6 72:9 74:8 87:11 94:18 98:22 102:10 110:10 123:9 133:11 140:5 146:21 170:15 <b>template (2)</b> 129:7,17 <b>ten (9)</b> 183:19 184:4,7 189:13 231:11 250:6 258:15 274:9 279:25 <b>ten-year (1)</b>	252:17 <b>tend (1)</b> 183:16 <b>tenfold (1)</b> 257:24 <b>tenure (2)</b> 37:25 125:21 <b>term (2)</b> 9:17 239:12 <b>terminate (3)</b> 137:12,25 199:14 <b>terminated (1)</b> 37:4 <b>termination (4)</b> 17:9 39:11 141:7 144:15 <b>terminology (1)</b> 160:20 <b>terms (64)</b> 5:4 29:18 35:24 49:19 74:21 84:16 110:22 113:14 115:14 130:17 132:17,24 133:22,23 143:25 145:5 161:6 177:11 178:4 180:14 181:2 183:8 186:11 187:15 189:17 190:2 196:13 201:14 202:24 206:22 209:18 220:22 221:23 222:4 233:7,14 245:8 247:12 248:18 254:6 255:20 258:5 259:5 259:9,11 260:10,14 260:17,19 263:14 268:25 269:4 275:18 277:17,23 277:25 278:12,19 280:11,15 284:17 285:18 286:2 289:17 <b>terrible (1)</b> 130:15 <b>test (14)</b> 87:4 99:4 119:22 129:11 151:24 254:25 255:5 272:3 272:7,8,22 273:23 274:17 275:25 <b>tested (1)</b> 163:5 <b>testified (2)</b> 170:17 268:18	<b>testify (7)</b> 23:6,9 24:8 25:12 170:3 247:9 278:13 <b>testifying (2)</b> 173:12 241:14 <b>testimony (18)</b> 18:17 25:4 26:18 77:6 77:19 145:9 169:14 170:21 171:11 172:8,15 173:21 199:7 240:4 241:19 262:13 297:10 300:11 <b>testing (6)</b> 105:24,24 124:24 129:10 130:4 131:18 <b>text (1)</b> 118:6 <b>thank (52)</b> 13:2,3 19:4,5 26:24 36:22 75:14 76:4,6 76:8 77:23,25 78:18 81:4 82:3 94:24 96:22 97:10 102:8 119:10 120:4 130:10 143:10 162:11,12,15 165:23 169:12 171:5,17,17 173:24 175:10,16 180:25 190:10 193:22 204:18 220:21 235:6,19 239:20,21 239:22 240:8,13 252:18 291:7 296:12,16,17 297:24 <b>Thanks (2)</b> 113:25 175:16 <b>theirs (1)</b> 293:25 <b>themes (2)</b> 177:25 178:2 <b>thick (1)</b> 258:9 <b>thin (1)</b> 273:19 <b>thing (42)</b> 11:15 53:2 77:12 97:16 101:25 111:23 116:9 126:19 127:13 150:6 163:13 164:18 165:9 177:9 178:16 179:24
--	--	--	---	---

183:13 206:7 210:2 211:2,20 214:24 215:4 216:16 218:20 220:20 222:6 224:19 234:22 247:17 253:12 260:23 266:14 270:12,23 272:18 276:19 279:3 285:14 293:17 295:11 296:3 <b>things (49)</b> 20:22 23:25 54:7 76:11 83:3 90:21 94:9 100:18 103:9 118:2 133:4 135:7 138:13 139:23 145:10 154:8 162:19 179:24 189:8 191:13 203:11 209:25 214:3,19 219:18 221:10 223:6 226:22,25 227:9 228:11,18 233:13 237:16,24 243:9 246:9,22,23 251:5 261:8 263:25 264:23 265:23 270:21 273:9 277:18 293:3,8 <b>think (164)</b> 12:22 13:7 19:10 24:11,23 26:12 39:20 53:4,5 54:22 73:10 81:20 82:23 84:16,22 85:14 92:6 93:17 95:8 97:15,17 110:5 117:21 118:2 121:13 125:11 127:6 131:17,24 137:2,9 142:25 143:13 144:20 145:11 148:7 149:12 150:3 151:8 151:15 153:6 154:23 157:11 161:22 162:22,25 163:6 164:9,18,19 165:9,10,14,19 168:4 177:9 179:3,4 179:4,23,24 180:15 181:15,18 183:2,9 184:3 185:13 186:6 186:18 187:8	188:16,23 189:24 190:24 191:8,13,16 192:8 194:6,17 197:16 200:11,25 204:14,19 205:14 206:14,15,17 207:15 209:24 210:2,13 211:23 212:16,18 215:21 216:2,7 218:17 219:18 222:7 225:12,15 226:16 231:24 232:5 233:3 233:15 234:22 236:14,14,15 237:24 239:3,6 246:22 247:6 250:17 252:9 253:16,24 254:24 255:13,21 256:21 257:3,8 258:8,25 259:16,18,21,23 260:3,23 262:8,11 263:2 264:11 266:21 267:2,16 269:12 270:2,12,17 271:15 272:9 276:24 277:18 278:7,24 280:25 281:23 283:23 286:11 287:4 288:18,20 292:25 294:2 295:16 <b>think,there (1)</b> 219:17 <b>thinking (9)</b> 195:10 209:9 218:21 226:15 231:18,19 253:20 259:20 293:12 <b>third (4)</b> 174:13 176:19 196:5 280:12 <b>thorny (1)</b> 258:9 <b>thoroughly (2)</b> 18:7 22:18 <b>thought (4)</b> 36:9 201:16 225:10 289:23 <b>thoughtful (1)</b> 126:23 <b>thoughts (1)</b> 234:6 <b>thousand (5)</b> 41:3 87:13,16 230:17	273:25 <b>threat (2)</b> 117:18 267:18 <b>threaten (1)</b> 266:24 <b>threatened (1)</b> 267:25 <b>three (17)</b> 6:19 64:15 66:10 75:8 86:13 137:6 141:5,9 172:12 176:10,25 178:6 180:22 207:15 221:6 234:10 250:8 <b>threshold (5)</b> 72:22 73:5,13,23 263:15 <b>thresholds (1)</b> 80:11 <b>thrust (1)</b> 159:6 <b>tie (2)</b> 123:24 281:8 <b>tiered (3)</b> 248:13 251:7 254:11 <b>tilting (1)</b> 245:16 <b>Tim (1)</b> 126:16 <b>time (69)</b> 19:19 29:5 31:17 39:19 43:4,12 48:12 48:22 52:5 64:7 69:24 78:20 86:2 93:6 96:8 98:17 105:3 107:9 109:8 118:16 119:25 122:15 131:3 135:13 137:23 148:20 149:2,15,16 151:14 153:6 157:17 166:9 171:25 173:22 184:17,18 196:17 196:19 205:3 224:19 226:21 231:10 240:15 242:9,14,19 243:8 244:4,13 245:15,24 245:25 246:25 248:20 249:11 253:16 255:17 257:3 273:4 275:12 275:24,25 277:5 278:3,7,8 293:21 298:3	<b>timeframe (1)</b> 231:6 <b>timeframes (2)</b> 174:14 234:16 <b>timeline (1)</b> 165:11 <b>times (10)</b> 98:23 138:17 185:11 186:4,23 199:14 215:16 258:15 265:17 274:11 <b>timing (4)</b> 182:24 195:7,10 196:21 <b>title (6)</b> 28:23 31:17 32:17 37:17 49:17 157:8 <b>Titles (1)</b> 43:15 <b>today (35)</b> 10:16 13:4 14:14 20:24 23:7 26:25 27:8,18 74:17 76:7 77:14 78:23 79:5 80:22 114:4,13 169:10,14 172:3,7 172:15,22 173:13 176:9 183:20 228:19 240:14,19 240:23 241:15 244:2 246:11 247:7 264:9 296:19 <b>today's (4)</b> 11:10 18:18 22:5 296:20 <b>told (10)</b> 11:22 49:5 54:5 66:24 71:12,16,18 74:17 75:9 103:9 <b>tool (1)</b> 92:4 <b>tools (1)</b> 287:7 <b>top (7)</b> 64:20 102:19 106:17 248:7 261:15 262:25 263:6 <b>topic (8)</b> 118:4 128:25 130:11 136:25 141:12 152:10 154:4 295:21 <b>topics (2)</b> 90:22 296:16 <b>total (5)</b> 134:9 149:14 165:6	249:15 252:17 <b>totaling (2)</b> 135:3,17 <b>totally (1)</b> 139:15 <b>touched (2)</b> 99:21 223:2 <b>tough (1)</b> 270:23 <b>traced (1)</b> 132:13 <b>track (6)</b> 129:13 157:17 169:23 286:5 287:20 290:2 <b>tracked (1)</b> 290:11 <b>tracking (3)</b> 192:18 215:6 243:7 <b>trade-off (3)</b> 119:3 182:3 197:16 <b>traded (1)</b> 33:21 <b>traditional (2)</b> 83:15 84:10 <b>train (1)</b> 185:7 <b>training (1)</b> 10:8 <b>transcript (1)</b> 296:19 <b>transfer (10)</b> 284:8,19,23 285:20 286:6,19 287:5,23 287:25 290:16 <b>transferability (8)</b> 191:4,14,18,19 193:2 193:6,13 194:17 <b>transferable (6)</b> 190:17 191:22 192:16 193:19 194:14 195:3 <b>transfers (1)</b> 290:3 <b>transit (1)</b> 261:6 <b>translate (2)</b> 162:5 243:5 <b>transparency (2)</b> 112:15 151:11 <b>transparent (1)</b> 168:8 <b>traveling (1)</b> 239:25 <b>Treasury (6)</b> 5:22 17:13 280:20 282:20,20 290:6
---	--	--	--	--

<b>treat (1)</b> 254:15 <b>treats (1)</b> 262:5 <b>tremendous (1)</b> 161:17 <b>trends (1)</b> 243:8 <b>Trenton (5)</b> 1:10 2:10 5:17 236:13 261:18 <b>trial (1)</b> 28:15 <b>tried (4)</b> 111:17 167:10 293:2 296:6 <b>trip (1)</b> 171:18 <b>trouble (1)</b> 196:13 <b>true (9)</b> 26:4 29:4 51:3 71:2 163:16 189:5 231:25 232:3 300:10 <b>trust (2)</b> 6:17 130:7 <b>Trusts (2)</b> 25:6 171:23 <b>truth (14)</b> 26:19,19,20 29:15,16 77:20,21,21 171:12 171:12,13 240:5,5,6 <b>truthful (1)</b> 27:23 <b>try (14)</b> 10:20 24:9 36:3 41:8 79:5 98:14 107:3 110:21 137:15 199:15 203:15 217:13 225:7 235:22 <b>trying (14)</b> 75:25 122:4 185:14 189:19 191:21 197:24 199:25 204:11 214:10 241:6 251:6 273:15 291:11 292:12 <b>Ts (1)</b> 267:11 <b>Turkey (1)</b> 30:3 <b>turn (18)</b> 23:12 38:14 55:12 59:16 64:24 67:18	81:23 101:13 110:15 111:15,19 114:24 127:5 143:10 172:13 175:12 187:7 260:19 <b>turned (1)</b> 271:12 <b>turning (2)</b> 93:19 190:25 <b>turns (1)</b> 295:24 <b>twenty (1)</b> 231:11 <b>twice (4)</b> 145:8 154:21 247:19 263:10 <b>two (43)</b> 3:19 4:21 20:22 23:7 29:5 31:2 32:6 40:4 40:8 41:3 54:7 58:20 61:4 75:8 76:11 86:9 90:25 110:24 114:3 115:21 124:17,20 137:17 143:14 144:4,25 152:17 162:18 163:25 172:15 187:9,25 223:6 227:2 236:6 237:4,24 245:20 246:12 249:11 255:25 277:18 293:8 <b>twofold (1)</b> 211:23 <b>tying (2)</b> 262:13 270:13 <b>type (6)</b> 31:24 32:14 54:25 160:20 250:19 259:22 <b>types (5)</b> 176:3 180:10 190:22 227:20 279:20	<b>umbrella (1)</b> 82:12 <b>unable (1)</b> 134:15 <b>unbeknownst (1)</b> 136:12 <b>unclear (1)</b> 164:19 <b>uncommon (1)</b> 282:13 <b>underlying (2)</b> 206:21 252:25 <b>understand (67)</b> 7:22 12:15,20 13:8 22:16 79:2,8,14 81:5 82:14 83:21 95:13 96:23 97:13 99:14 100:9 101:12 102:17 115:19 116:7 117:9 118:3 119:17 121:9 122:2 122:3 126:5 128:15 130:19 135:10 136:11 138:6 145:12,15 147:8 148:8,22 149:25 150:4,9,18,25 151:25 155:5,23 161:12 162:23 163:2 164:17 165:11,16 166:2 177:9 188:24 192:24 195:11 214:21 215:6 218:9 226:17 252:14 262:9 264:2 266:4 267:19 275:19 282:9 <b>understandable (1)</b> 197:17 <b>understanding (21)</b> 23:18 27:25 69:13 78:24 82:5 89:7 90:10 92:22 99:11 100:20 105:12 127:19 129:5 137:6 152:22 156:21 166:25 170:22 244:3 268:18 287:22 <b>understands (3)</b> 79:21 164:10 220:2 <b>Understood (3)</b> 44:25 83:18 124:11 <b>undertake (1)</b> 14:24	<b>undertook (1)</b> 16:9 <b>undesirable (1)</b> 290:17 <b>unemployed (1)</b> 186:8 <b>unemployment (5)</b> 186:4,6,19 217:8,11 <b>uneven (1)</b> 291:17 <b>unexpectedly (1)</b> 178:19 <b>unfair (1)</b> 139:11 <b>unfairly (1)</b> 133:11 <b>unfettered (1)</b> 253:4 <b>unfolded (1)</b> 293:20 <b>unfortunately (3)</b> 17:20 170:5 271:11 <b>unique (1)</b> 161:23 <b>unit (1)</b> 34:2 <b>universe (1)</b> 149:8 <b>University (3)</b> 30:3,5 206:5 <b>unlawful (1)</b> 39:11 <b>unlock (1)</b> 283:20 <b>unpack (14)</b> 24:9 39:15 52:14 145:7 149:13 154:16 155:12 188:22 214:24 256:10 260:18 262:3 282:7 287:17 <b>unpredictable (1)</b> 196:17 <b>untruthful (1)</b> 47:16 <b>unusual (3)</b> 201:3,5 224:12 <b>up-front (1)</b> 188:7 <b>upheld (1)</b> 90:19 <b>upper (1)</b> 189:16 <b>uptick (1)</b> 248:25 <b>upwards (1)</b>	256:15 <b>urban (1)</b> 205:9 <b>use (24)</b> 38:15 56:18 82:24 120:3 173:2 176:4 190:6 191:3 193:8 194:21 196:10 201:13 203:11 217:2,13 219:22 220:15 222:12 231:21 232:10 237:25 244:7 266:23 279:8 <b>useful (2)</b> 185:22 235:8 <b>uses (4)</b> 179:21 196:6 272:11 272:14 <b>usually (8)</b> 5:2 81:9 226:18 236:9 239:6 247:20 260:25 273:7 <b>utility (1)</b> 194:7
<b>V</b>				
				<b>vacancies (1)</b> 214:10 <b>valid (1)</b> 165:17 <b>validity (1)</b> 273:22 <b>valuable (7)</b> 184:8,23 185:8 190:24 197:15 212:2 225:21 <b>valuation (1)</b> 226:3 <b>value (13)</b> 15:14 93:14 154:25 164:24 182:23,25 183:8,20 184:19 191:25 218:19 273:2 283:8 <b>valued (2)</b> 134:10 194:10 <b>variable (1)</b> 150:20 <b>variables (1)</b> 151:2 <b>variation (1)</b> 206:9 <b>varied (1)</b> 89:14 <b>varies (2)</b>

95:15 200:18 <b>variety (3)</b> 18:4 186:13 280:17 <b>various (9)</b> 8:13 34:14 101:7 126:22 166:19 168:11 201:24 240:22 297:4 <b>vary (1)</b> 193:4 <b>venture (1)</b> 285:2 <b>verdict (1)</b> 167:14 <b>verifiable (2)</b> 149:9 219:19 <b>verification (5)</b> 10:14 140:2 145:23 159:9 200:24 <b>verified (5)</b> 131:15 148:14,15 152:19 195:25 <b>verify (23)</b> 8:3 10:9 15:17,24 120:17,24 124:15 134:16 136:4 145:18 146:14 151:24 159:10 169:22 208:19 214:17 216:15,19 216:23 217:13 222:24 227:8 232:25 <b>verifying (8)</b> 6:18 122:20 130:8 174:23 200:15 221:8 224:22 232:22 <b>version (4)</b> 56:22 81:12 130:7 295:7 <b>versus (5)</b> 200:20 239:5 265:6 274:11 275:3 <b>vice (1)</b> 32:9 <b>view (8)</b> 22:24 230:19 237:3 253:10,11 257:10 274:20 284:20 <b>viewed (3)</b> 141:3 186:23,24 <b>views (3)</b> 211:18 297:12,14 <b>violated (1)</b> 72:21	<b>violation (1)</b> 42:11 <b>violations (2)</b> 73:15,16 <b>Virginia (3)</b> 220:6,12,17 <b>visitors (1)</b> 182:5 <b>visits (1)</b> 218:14 <b>voices (2)</b> 204:12 210:20 <b>volume (7)</b> 161:17 245:3,4,21 249:16 251:16 256:3 <b>voluntarily (4)</b> 16:14 170:4 173:14 241:14 <b>vote (1)</b> 270:18 <b>VP (11)</b> 33:3 35:10 39:21 59:24 62:4 70:8,10 70:24 71:6,11,16 <hr/> <b>W</b> <hr/> <b>wage (1)</b> 182:14 <b>wages (2)</b> 217:10 272:17 <b>Walden (49)</b> 1:15 3:24 4:3 18:16 19:4 76:10 78:4 158:18 159:13 162:17 188:20 190:10 192:23 193:10,22 199:6,10 203:6 204:18 214:23 223:23 224:3 225:12 231:24 232:15 240:19 248:5,10 252:12,18 256:9 257:16 258:3 259:3 266:4 275:16 277:3 281:14,17,21 282:3 282:7 287:16 288:6 289:3 290:13 294:21 295:20 299:5 <b>walking (1)</b> 173:9 <b>Wall (1)</b> 48:23 <b>Walsh (1)</b>	78:11 <b>want (98)</b> 3:5 11:11 13:19 16:2 20:23 22:9 23:24 24:21 28:10,17 39:14 41:17,18,23 41:25 62:16 63:14 66:24 69:8 71:8 75:14 76:25 78:9 86:22 90:17 93:5 97:16 98:4 101:25 105:15,20 107:13 108:13 109:11,18 114:4,17 115:18 116:6 117:23,24 119:23 120:8 125:14,15 127:14 127:17 130:12 133:21 139:13 141:5,13 143:4,15 145:6,7 154:4 155:12 159:19 162:17,20 166:2 170:9,24 176:5 181:9 182:2 186:3 188:24 194:22 210:5,6 213:22 215:17 228:11,17 237:9 239:7 240:13 241:12 248:16 256:7 257:2 262:15 263:25 267:23 268:19 274:20 275:10,11 277:19 278:9 279:14 284:25 288:24 290:20 293:17 294:22 <b>wanted (11)</b> 11:19 87:18 89:9,11 89:16 106:8,10 109:7 158:22 169:7 269:2 <b>wants (3)</b> 192:12 231:24 293:25 <b>War (1)</b> 2:9 <b>warning (1)</b> 224:2 <b>warrant (1)</b> 148:17 <b>warranted (2)</b> 123:20 161:5 <b>warranties (2)</b> 101:8 167:19 <b>Washington (1)</b>	180:19 <b>wasn't (10)</b> 68:9 92:7 110:2 127:2 146:7 156:19 165:19 274:25 294:25 295:9 <b>waste (1)</b> 80:20 <b>watch (1)</b> 84:23 <b>watchdog (3)</b> 79:25 84:17 257:11 <b>watching (1)</b> 3:10 <b>way (56)</b> 14:23 16:17 21:20 22:13 24:10 25:17 27:25 79:15 84:14 110:20 117:6 119:9 119:12,13 122:2 131:2,5 142:10 146:9 157:16 161:25 162:6,9 163:4 178:25 183:2 191:21 194:9 195:12 197:18 202:6 206:16,18 215:21 218:8 219:25 224:13 235:10,23 236:18 246:17 253:3,20 261:23 263:21 274:16 276:11,12 279:17 284:2,4 289:4,20 292:10 295:22 300:16 <b>ways (19)</b> 6:9 25:15 26:6 122:20 126:22 175:7 184:18,20 199:22 199:24 201:24 219:12 243:7 254:20 260:21 277:21 280:18,24 296:23 <b>we'll (2)</b> 40:19 143:20 <b>we're (2)</b> 245:6 248:14 <b>we've (2)</b> 240:22 279:13 <b>weaken (1)</b> 112:15 <b>wealth (1)</b> 172:4 <b>weeks (9)</b>	6:19 12:22 19:7 22:2 61:4 94:19 95:24 151:9 167:6 <b>weigh (2)</b> 209:5 220:25 <b>weighing (1)</b> 221:8 <b>weight (1)</b> 213:14 <b>welcome (6)</b> 3:5,9 21:7,8 169:5 171:7 <b>well-being (1)</b> 82:25 <b>well-defined (1)</b> 116:16 <b>went (10)</b> 10:19 11:25 17:3 150:12 222:15 249:7 250:9,18 271:12 289:8 <b>weren't (2)</b> 51:12 271:10 <b>whats (1)</b> 132:5 <b>whereof (1)</b> 300:18 <b>whistleblower (7)</b> 28:8 35:16,25 36:7 40:3 165:12 169:15 <b>whistleblowers (3)</b> 21:3,4 170:14 <b>Whiten (69)</b> 25:20 240:1,2,11 241:1,12,21 242:1 243:1 244:1 245:1 246:1 247:1 248:1 249:1 250:1 251:1 252:1 253:1 254:1 255:1 256:1 257:1 258:1 259:1 260:1 261:1 262:1 263:1 264:1 265:1 266:1 267:1 268:1 269:1 270:1 271:1 272:1 273:1 274:1 275:1 276:1 277:1 278:1 279:1 280:1 281:1 282:1 283:1 284:1 285:1 286:1 287:1 287:12 288:1 289:1 290:1 291:1 292:1 293:1 294:1 295:1 296:1,12 297:1 298:1 299:1,7 300:1 <b>wholeheartedly (2)</b>
--	---	--	---	--



105:17,19 <b>whys (1)</b> 132:5 <b>Williams (8)</b> 1:16 4:6 19:15 26:13 26:23 75:13 76:6 299:4 <b>willing (1)</b> 263:19 <b>willingly (1)</b> 59:25 <b>win (1)</b> 276:24 <b>wink (1)</b> 267:9 <b>Winston (6)</b> 1:17 4:6 20:5,6 169:8 169:12 <b>wisdom (1)</b> 13:15 <b>wish (3)</b> 79:9 94:6 297:12 <b>witness (57)</b> 26:21 75:23 77:22,25 153:24 160:10,23 162:15 169:7,9,15 170:3 171:3,14 172:17 189:2 193:3 193:16 194:5,15 199:9 200:11 203:20 216:2 224:14 225:15 232:24 237:15 238:24 240:7 248:7 248:12 252:16 256:12 257:25 258:8 266:20 275:22 277:9 281:16,19 282:2,6 282:12 288:4,18 289:16 291:4 292:25 294:8,11,15 295:9 296:10,17 299:3 300:18 <b>witnessed (3)</b> 36:24 42:3 47:15 <b>witnesses (4)</b> 23:8 167:13 240:23 247:9 <b>woman (1)</b> 23:13 <b>wonderful (1)</b> 150:2 <b>wondering (1)</b> 292:9 <b>word (3)</b>	6:22 15:14 82:24 <b>words (7)</b> 47:13 72:11 88:20 99:15 104:12 124:25 145:25 <b>work (34)</b> 9:7,9 10:6 11:14 13:20 15:22 29:19 30:22,25 31:24 32:3 32:5 57:9 95:16,23 95:25 122:3 170:23 171:2 175:20,25 180:19 183:3 185:3 186:8 201:4,24 213:23 255:16 275:23 280:16,17 295:2 296:24 <b>worked (10)</b> 24:3 25:23 28:21 29:20 31:5 34:3,16 35:9 37:19 41:12 <b>workers (4)</b> 182:14 185:7 214:9 216:9 <b>working (19)</b> 12:4 19:6 40:23 43:11 46:9 48:23 49:11 51:11 110:17 213:10 219:4 222:23 223:13 228:4 235:4 238:5 242:8,16 269:19 <b>works (9)</b> 81:20 95:10 119:12 119:13 177:12 191:22 211:22 236:18 258:23 <b>worksheets (5)</b> 127:22 128:12,17 129:3,24 <b>world (3)</b> 117:2 224:10 261:22 <b>worries (1)</b> 62:15 <b>worry (3)</b> 71:12,18 263:6 <b>worse (4)</b> 17:18 126:2 258:15 274:6 <b>worst (1)</b> 196:25 <b>worth (5)</b> 135:9 143:9 218:17 259:25 260:9 <b>wouldn't (8)</b> 90:17 109:24 125:23	201:13 222:18 233:3 279:4 283:22 <b>wrap (1)</b> 100:18 <b>written (5)</b> 77:7 116:16 123:4 235:14 248:21 <b>wrong (4)</b> 10:19 149:21 271:12 292:14 <b>wrongdoing (1)</b> 23:11 <hr/> <b>X</b> <hr/> <b>X (2)</b> 215:16,17 <b>XYZ (1)</b> 288:7 <hr/> <b>Y</b> <hr/> <b>Y (1)</b> 215:18 <b>yeah (23)</b> 70:21 71:10 81:13 88:25 106:21 120:18 121:13 125:23 130:9 131:7 141:22 152:7 156:11 193:3 200:11 254:13 257:25 263:21 267:12 278:24 282:13 286:13 294:15 <b>year (34)</b> 32:6 81:25 144:5 149:3,4,11 153:20 155:20,22 156:6,6 156:17,24 157:3 165:3 187:11,12 189:11,12,20 190:2 190:2 195:8,9 196:14,14 206:7 247:13 252:15,16 257:13,23 282:17 283:3 <b>year's (1)</b> 230:2 <b>year-to-year (1)</b> 190:7 <b>yearly (6)</b> 5:19 148:25 149:10 164:21,22 165:7 <b>years (47)</b> 8:8 18:20,21 20:7 25:23 30:16 31:2,7	32:6 34:15 90:25 110:2 124:18,21 152:17 175:20 180:22,22 183:19 184:4,7,13 189:7,13 196:5,11,16 202:13 202:14 204:23 231:12 240:15 250:6,8 264:13 268:6 271:7 273:8 274:8,9,11,11 276:7 276:13,16 279:25 282:23 <b>yelled (1)</b> 109:2 <b>York (14)</b> 1:10 20:18 56:5,19,24 62:11,22 63:2,12,19 67:25 68:20,23,23 <b>York's (1)</b> 19:25 <b>Yup (1)</b> 107:8 <hr/> <b>Z</b> <hr/> <b>zero (1)</b> 294:25 <b>zone (5)</b> 5:12 205:10 236:11 263:22 269:13 <b>zones (3)</b> 5:11 261:17 269:10 <b>zoning (1)</b> 185:17 <hr/> <b>0</b> <hr/> <b>1</b> <hr/> <b>1 (15)</b> 34:22 41:14 54:10 96:24 102:20 103:3 107:7,24 108:4,11 108:13,19,25 111:19 124:5 <b>1.5 (1)</b> 17:10 <b>1.6 (1)</b> 251:22 <b>1:15 (1)</b> 168:13 <b>1:17 (1)</b> 169:3 <b>10 (8)</b> 45:8 55:13 67:19,21 184:13 189:6 249:17 272:25	<b>10:00 (1)</b> 2:6 <b>100 (13)</b> 7:8 11:24 14:7 117:25 155:19 189:12 220:18,19 244:25 273:18 274:4,7 290:7 <b>104 (1)</b> 61:8 <b>11 (9)</b> 8:11 41:16 72:9 106:22 114:25 115:5 165:5 230:16 232:3 <b>110 (4)</b> 272:25 273:3 275:10 276:14 <b>12 (2)</b> 46:24 118:5 <b>12:56 (1)</b> 168:12 <b>13 (4)</b> 31:7 41:16 58:2 61:7 <b>14 (2)</b> 31:7 107:14 <b>15 (6)</b> 20:7 132:6 273:8 274:11 275:3 276:13 <b>158413 (1)</b> 1:23 <b>16 (1)</b> 264:17 <b>17 (2)</b> 128:22 166:15 <b>17,000 (2)</b> 249:20 250:7 <b>171 (1)</b> 299:6 <b>18 (4)</b> 18:21 42:17 48:13 54:23 <b>19 (2)</b> 79:2 81:25 <b>1996 (3)</b> 30:19 244:21 249:13 <hr/> <b>2</b> <hr/> <b>2 (11)</b> 8:2 37:9 60:25 64:5 96:24 108:16 110:18 111:19 131:23 153:4 270:8 <b>2,600,000 (2)</b> 44:8,20
---	---	--	--	---

<b>2,993 (4)</b> 113:14 148:13,25 149:9	38:5 41:14 54:10,19 75:4 283:11,12	108:17 118:6 124:3 126:11 153:4 166:22 167:4,21	<b>500 (3)</b> 153:12,13,22
<b>2:15 (2)</b> 215:2 224:2	<b>2017 (9)</b> 9:6 91:3 127:23 128:11,14,19 134:25 149:21 166:8	<b>3,000 (6)</b> 148:12 150:8 151:13 162:24 164:24 165:4	<b>52 (3)</b> 3:13 153:13,17
<b>20 (8)</b> 8:8 12:10 110:2 116:8 184:13 189:6 204:23 268:6	<b>2018 (5)</b> 135:4 166:16 167:15 230:18 250:24	<b>3,670 (1)</b> 165:3	<b>55.7 (1)</b> 249:25
<b>2000 (1)</b> 249:22	<b>2019 (15)</b> 1:11 2:5 3:12 97:4 102:12 103:2,3,11 105:8,8 126:11 167:16,21 270:6 300:20	<b>3:23 (1)</b> 298:3	<hr/> <b>6</b> <hr/>
<b>2000s (5)</b> 249:15,19,21 264:16 264:17	<b>2001 (3)</b> 41:2,4 69:22	<b>30 (3)</b> 177:20 276:7,16	<b>6 (3)</b> 97:6 101:14 143:13
<b>2005 (1)</b> 149:21	<b>2005 (1)</b> 149:21	<b>30-year (1)</b> 276:18	<b>60 (2)</b> 59:17 108:22
<b>2007 (2)</b> 279:21 282:13	<b>2007 (2)</b> 279:21 282:13	<b>30,000-foot (1)</b> 158:22	<b>68 (2)</b> 66:20,22
<b>2009 (6)</b> 153:12,15,16,22 242:7 249:22	<b>2009 (6)</b> 153:12,15,16,22 242:7 249:22	<b>31 (1)</b> 153:15	<b>69 (3)</b> 73:8,13,23
<b>2009s (1)</b> 257:21	<b>2009s (1)</b> 257:21	<b>32 (5)</b> 62:9,16,20 183:20,23	<hr/> <b>7</b> <hr/>
<b>2010 (5)</b> 103:3,10 134:25 250:6,9	<b>2010 (5)</b> 103:3,10 134:25 250:6,9	<b>35 (3)</b> 274:8,11 275:3	<b>7 (1)</b> 63:15
<b>2010s (4)</b> 249:24 250:9 264:16 264:19	<b>2010s (4)</b> 249:24 250:9 264:16 264:19	<b>38 (1)</b> 70:13	<b>70,000 (1)</b> 45:7
<b>2011 (4)</b> 31:15,21,23 242:18	<b>2011 (4)</b> 31:15,21,23 242:18	<hr/> <b>4</b> <hr/>	<b>71 (4)</b> 55:13,23 67:19,21
<b>2012 (7)</b> 242:24 244:14,15,24 249:9 255:12 268:13	<b>2012 (7)</b> 242:24 244:14,15,24 249:9 255:12 268:13	<b>4 (7)</b> 8:4 64:24 97:2 124:12 125:18 131:24 132:8	<b>75 (1)</b> 57:3
<b>2013 (16)</b> 4:12 32:11,22 230:25 240:22 247:24 248:24 250:9,16 254:24 255:14 270:5,6 272:23 273:10 289:8	<b>2013 (16)</b> 4:12 32:11,22 230:25 240:22 247:24 248:24 250:9,16 254:24 255:14 270:5,6 272:23 273:10 289:8	<b>401 (1)</b> 87:22	<b>76 (1)</b> 68:12
<b>2014 (3)</b> 32:11,22 48:19	<b>2014 (3)</b> 32:11,22 48:19	<b>41 (3)</b> 60:6,10 135:15	<b>78 (1)</b> 299:5
<b>2015 (18)</b> 33:2,18 37:20 48:10 48:11,13 54:23 61:3 64:8 70:22 74:2,18 75:2 76:3 105:2 106:5,22 166:5	<b>2015 (18)</b> 33:2,18 37:20 48:10 48:11,13 54:23 61:3 64:8 70:22 74:2,18 75:2 76:3 105:2 106:5,22 166:5	<b>41.7 (2)</b> 134:10 135:9	<b>78,000 (3)</b> 251:2 252:5 291:24
<b>2015/2016 (1)</b> 35:10	<b>2015/2016 (1)</b> 35:10	<b>42 (7)</b> 87:25 88:8,21,23 89:6 89:8 90:9	<hr/> <b>8</b> <hr/>
<b>2016 (11)</b> 9:8 28:7 33:18 37:20	<b>2016 (11)</b> 9:8 28:7 33:18 37:20	<b>43,000 (2)</b> 250:3,10	<b>8 (3)</b> 59:16 104:18,19
		<b>46 (1)</b> 264:20	<b>80 (1)</b> 156:25
		<b>48 (3)</b> 63:15 88:9 265:9	<b>84 (1)</b> 72:9
		<hr/> <b>5</b> <hr/>	<b>85 (1)</b> 72:9
		<b>5 (7)</b> 62:8,15 97:4 103:17 127:6 133:19 153:10	<hr/> <b>9</b> <hr/>
		<b>5,000 (1)</b> 220:3	<b>9 (4)</b> 66:19 82:2 158:3 167:22
		<b>50 (3)</b> 16:4 67:6 95:24	<b>96 (2)</b> 46:25 47:10
			<b>96.4 (1)</b> 250:24
			<b>98 (2)</b> 58:3,12
			<b>9th (1)</b> 82:3